

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram: Dr. Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri V.S. Verma, Member

Petition No. 162/MP/2011

Date of Hearing: 29.01.2013
Date of Order : 08.05.2013

In the matter of

Petition under Section 62 read with Section 63 of the Electricity Act, 2003 for determination of transmission charges for additional scope of work and corresponding amendment of transmission charges approved by the Commission through order dated 28.10.2010 for transmission system being established by petitioner as there is a change/addition in the scope of work of the project.

And
In the matter of

East North Interconnection Company Limited, New Delhi Petitioner
Vs	
Punjab State Transmission Corporation Limited and Others	... Respondents

Following were present:

Miss Meenakshi Arora, Advocate for the petitioner
Miss Ambica Garg, Advocate for the petitioner
Shri T.A.N.Reddy, ENICL
Shri G.V. Sreeraman, ENICL
Shri Mahesh Sharma, ENICL
Shri Pulkit Sharma, ENICL
Shri S. Venkatesh, ENICL
Shri Padamjit Singh, PSPCL
Shri TPS Bawa, PSPCL
Shri R.B. Sharma, Advocate, BRPL
Shri Ramchandra, PGCIL
Shri Pankaj Kumar, PGCIL
Shri R.K.Shahi, PFCCL
Shri Sanjay Rai, PFCCL

ORDER

Sterlite Technology Limited (STL) was selected as the successful bidder based on the international tariff based competitive bidding to establish the following transmission system on 'build, own, operate and maintain' basis and to provide transmission service to the Long Term Transmission Customers of the project:

- (a) Bongaigaon-Siliguri 400 kV Quad D/C transmission line
- (b) Purnea-Biharsharif 400 kV Quad D/C transmission line

A Letter of Intent (LOI) was issued by the Power Finance Corporation as the Bid Process Coordinator (BPC) to Sterlite Technology Limited on 7.1.2010. Sterlite Technology Ltd.(STL)accomplished all milestones required in terms of the Request for Proposal (RfP) and Letter of Intent (LOI) and acquired the East North Interconnection Company Limited (ENCIL) as its fully owned subsidiary. ENCIL approached the Commission for grant of transmission licence in Petition No. 131/2010 and for adoption of tariff of the transmission system in Petition No.130/2010. The Commission in its order dated 28.10.2010 in Petition No. 130/2010 has adopted the tariff of the transmission system and in order dated 28.10.2010 in Petition No.131/2010 has granted licence to ENCIL for inter-State transmission of electricity.

2. ENCIL, the petitioner herein, has approached the Commission seeking determination of transmission charges for additional scope of work and corresponding amendment to the transmission charges adopted by the Commission vide order dated 28.10.2010 in Petition No. 130/2010.

Case of the Petitioner

3. The petitioner has submitted that the following facts have led to the filing of this petition:

- (i) ENCIL was incorporated as a wholly owned subsidiary of Power Finance Corporation and was designated as the Bid Process Coordinator by Government of India, Ministry of Power vide Notification No. 11/12/2006-PG for the purpose of selecting a successful bidder as a Transmission Service Provider (TSP) in order to establish the transmission system for "Transmission Scheme for import of NER-ER surplus power by NR" through competitive bidding process.

- (ii) BPC issued the Request for Qualification (RfQ) on 22.12.2008 and Request for Proposal (RfP) on 22.4.2009 and a Survey Report alongwith the communication to the bidders on 22.4.2009. The RfQ, RfP and Transmission Service Agreement (TSA) did not specify the 'start' and 'end' points of the transmission system to be undertaken by the Transmission Service Provider (TSP). A query was raised by the participating bidders to the BPC seeking specific details/coordinates of the 'start' and 'end' of the proposed transmission system. BPC issued a clarification on 15.6.2009 that "the 'start' and 'end' points will be the sub-stations of Powergrid at the respective locations, and the obligation for arranging for inter-connection points shall be as per the provisions of Article 4.2.1 of the TSA."

- (iii) The clarification of BPC did not provide the details of exact connection points/coordinates of the 'start' and 'end' points as there are no sub-stations of

Powergrid at the respective locations as mentioned in the Survey Report dated 22.4.2009. Per force, the petitioner relied upon the detailed Survey Report provided by the BPC. The Survey Report was prepared for the project on the instructions of the BPC and was provided to the qualified bidders. The Survey Report contained information regarding the transmission line i.e. voltage level, line configuration, indicative route alignment, conductor type, conductor configuration and type of terrain likely to be encountered. Final Route Alignment Report and Data Sheet formed part of the Report which provided to the bidders the tower wise detailed data sheet with reference to the 'start' and 'end' points of the transmission lines.

- (iv) The Survey Report provided two kinds of data relating to connecting ends of the transmission lines i.e. GPS coordinates of start and end points on summary sheets and a detailed data sheet of the transmission lines. During the independent survey conducted by the petitioner, it realized that GPS (Global Positioning System) coordinates on the summary sheets (as claimed to be 'start' and 'end' points) were different from the GPS coordinates provided in the detailed data sheet. The petitioner is stated to have further realized that the coordinates given in the statement summary of the Survey Report were completely incorrect. The petitioner has submitted that the actual endpoint of Bongaigaon-Siliguri 400 kV Quad D/C transmission line is Binaguri sub-station instead of Siliguri. Similarly, the actual 'start' point of 400 kV D/C (Quad) Purnea - Biharshariff transmission line is Maranga instead of Purnea. The petitioner has submitted that on account of the incorrect coordinates given in the statement of summary of the Survey Report, the petitioner relied on the

start and end points/gantry/angle points given in the detailed data sheet of the Survey Report and accordingly prepared its financial bids.

(v) Based on the bid, the project was awarded to STL being the lowest bidder and LOI was issued on 7.1.2010. STL executed the Share Purchase Agreement on 31.3.2010 and acquired ENICL. In August 2010, ENICL-STL executed the Transmission Service Agreement with the Long Term Transmission Customers of the transmission system.

(vi) On 23.6.2010, PGCIL issued a letter to the petitioner providing the layout drawing of 400 kV sub-station at village Fukagaon, P.S. Salakati, Dist. Kokrajhar, Assam showing the location of the termination bays of 400 kV Bongaigaon-Siliguri D/C line. The petitioner has submitted that the coordinates given for the end point at Bongaigaon were completely different from those given in the Survey Report which indicated that the end point is located at village Kurshakati, PS Basugaon, Dist. Kokrajhar, Assam. In order to connect the lines from the coordinates given in the Survey Report to those provided by PGCIL, the petitioner would need to construct an additional line of 0.8 km. On 3.8.2010, PGCIL issued a letter to the petitioner depicting the Main Single Line Diagram and overall General Arrangement drawings for 400 kV Siliguri and Purnea sub-stations showing the locations of terminal bays for 400 kV Bongaigaon-Siliguri and Biharsharif-Purnea lines. The petitioner has submitted that as per the said diagram and drawings, the termination point for Siliguri is the sub-station located in the village Binaguri, PS Rajgunj, Dist. Jalpaiguri, West Bengal and the termination point for Purnea is the sub-station located at

village Maranga, P.O. Lalgunj, Dist Purnea, Bihar. The petitioner has submitted that the coordinates for the termination bays are completely different from the ones given in the Survey Report. In order to terminate the lines at the coordinates provided by PGCIL, the petitioner has submitted that it would be required to construct an additional line of 30.1 km for Bongaigaon-Siliguri line and additional line of 50.25 km for Purnea-Biharshariff line, resulting in additional line length of 80.35 km.

(vii) On 22.2.2011, PGCIL issued a letter indicating the terminating bay arrangement at its Biharshariff sub-station which is the present end point of Purnea-Biharshariff transmission line and is located in village Mahananpur, PS Deepnagar, Dist. Nalanda whereas the coordinates of the gantry location as per the detailed Data Sheet of the Survey Report are located at village Ali Nagar, PS Lahiri, Dist Nalanda. In order to comply with the requirement given by PGCIL, the petitioner would be required to build an additional transmission line of 2.25 km beyond the end point provided by the BPC to terminate their line to Biharshariff sub-station of PGCIL.

(viii) The petitioner has submitted that PFC had represented in the bid document as well as in the Survey Report that there is no forest area in the entire line route of either of the transmission lines. On receipt of the communication dated 3.8.2010 from PGCIL, the petitioner found that the existing Bongaigaon sub-station is located in the centre of Satbandi Reserved Forest and no line can be taken out from this substation without passing through the reserved forests.

The petitioner is forced to incur additional expenditure of Rs 2 crore towards

payment of afforestation cost apart from being subjected to lengthy procedure and time delay involved in obtaining all clearances for construction of transmission line in the reserved forests.

(ix) The petitioner has submitted that on account of the aforementioned changes in the original scope of work on the basis of which the holding company of the petitioner i.e. Sterlite Technology Limited had quoted the financial bid, the petitioner is now required to incur substantial additional amount in order to comply with the requirement of PGCIL. The petitioner has submitted the summary break-up of the additional expenditure incurred or to be incurred as under:

- (a) On account of additional distance of the Transmission Project: ₹24.765 Crore/annum as there has been an increase in the total project line by 21% from the original scope of work.
- (b) On account of forest involvement : ₹3 Crore

(x) On 9.3.2011, the petitioner wrote to Punjab State Power Corporation Limited (PSPCL), the lead Long Term Transmission Customer of the transmission lines, with a copy to Central Electricity Authority, inter-alia stating that the petitioner is required to undertake construction of additional line of length 80 km which would have additional cost implication and sought inputs from PSPCL to urgently resolve the matter. The petitioner has submitted that CEA in its letter dated 28.4.2011 confirmed that the GPS coordinates mentioned in the PGCIL's letter were in order and clarified that the transmission lines being built by the petitioner would terminate at the respective gantries of PGCIL's sub-station. CEA further clarified that "if there is any change in the transmission line length

and cost due to actual location of Powergrid substations, then the same should be dealt with as per the contract/ TSA.”

- (xi) The Petitioner has submitted that the Commission in its order dated 28.10.2010 has captured the entire scope of work of the two transmission lines as under:
- (a) Bongaigaon- Siliguri 400 kV Quad D/C transmission line – [217.417 km]
 - (b) Purnea-Biharshariff 400 kV Quad D/C transmission line – [209.893 km]

However to connect Bongaigaon and Siliguri sub-stations and Purnea and Biharshariff sub-stations, the petitioner would have to undertake the additional work of 80.35 km transmission line apart from the additional cost towards forest clearance. The petitioner has submitted that it had quoted the tariff for 380 km as per the survey report against which the petitioner is required to construct the total line length of 460.25 km and therefore the tariff quoted by the petitioner should be increased proportionately for 460.25 km. The petitioner has requested for revision of the tariff on proportionate basis for the additional scope of work as per the following equation:

Revised Tariff = Quoted Tariff divided by 380 and multiplied by 460.25

i.e. ₹118.795 crore*459.22/380 = ₹143.561 crore

- (xii) Clause 12.2.1 of the TSA provides for increment of the project cost expenditure. The Commission in its order dated 28.10.2010 while adopting the tariff has directed that the petitioner is entitled to claim additional expenditure incurred in acquiring the project under Clause 12.2.1 of the TSA as increase in the

Non-escalable transmission charges. The petitioner has requested that the expenditure on account of revised scope of work be allowed as increase in Non-escalable transmission charges.

4. The Petitioner has prayed for the following relief in the petition:
 - (a) Allow this petition for increase of transmission charges with respect to the Transmission Project on account of (i) the change in the geographical co-ordinates viz. 'start' and 'end' points, (ii) additional expenditure towards forest clearance of 1.84 km (8.46 Ha forest land),
 - (b) Pass any other order/ directions this Hon'ble Tribunal in the facts and circumstances of the present case may deem as fit and proper.

Proceedings of the Case

5. The Commission in the Record of Proceedings for the hearing dated 8.9.2011 had directed to issue notices to all Long Term Transmission Customers of the project, the Central Transmission Utility, Central Electricity Authority and the Bid Process Coordinator of the project. Despite notice, none of the Long Term Transmission Customers of the project appeared before the Commission nor filed any reply to the petition. PGCIL filed its reply vide affidavit dated 20.10.2011. The Bid Process Coordinator, PFC Consulting Limited has filed its replies vide affidavits dated 16.12.2011 and 28.3.2012. The petitioner has filed its rejoinder to the reply of PFC Consulting vide affidavit dated 13.1.2012. PGCIL has filed its response to the averment made in para 9 of the rejoinder affidavit of the petitioner vide affidavit dated 1.2.2012. In response to the directions of the Commission in the hearing held on 7.2.2012, PFC Consulting, PGCIL and CEA have filed the necessary information vide

affidavit dated 28.3.2012 and 29.3.2012 and letter dated 27.3.2012 respectively. The petitioner has also filed an additional affidavit dated 30.3.2012 clarifying certain queries raised during the hearing on 7.2.2012.

6. The petition was finally heard on 7.2.2012 and order was reserved. Subsequently, Punjab State Power Corporation Limited (PSPCL) in its affidavit dated 3.10.2012 submitted that after unbundling of Punjab State Electricity Board, all matters pertaining to purchase of power and payment of ISTS bills are dealt with by PSPCL and not by PSTCL. Since PSTCL has been shown as the respondent in the petition, PSPCL did not receive the notices of the Commission and therefore, could not attend the hearing. PSPCL sought an opportunity of hearing in the matter. After consideration of the request, the petition was set down for further hearing and notices were issued to all Long Term transmission Customers of the project. PSPCL as the lead LTTC has submitted that a meeting of the beneficiaries of the transmission system was convened on 23.11.2012 which was attended to by the representatives of Punjab, Haryana, Rajasthan, Himachal Pradesh, BRPL/Delhi. Replies have been filed by PSPCL, Ajmer Vidyut Vitaran Nigam limited, BSES Rajdhani Power Limited, TATA Power Delhi Distribution Limited. PSPCL has also filed a consolidated reply on behalf of the distribution companies of Delhi, Haryana, Rajasthan and Punjab. Subsequently the matter was finally heard on 29.1.2013.

Replies to the petition

7. PGCIL vide letter dated 20.10.2011 has submitted that during the bidding process, PGCIL was not requested to provide coordinates for the start and end points of the lines and as such, PGCIL has not furnished the co-ordinates of any of its four

sub-stations viz. Bongaigaon, Siliguri, Purnea and Biharsharief during the bidding process. PGCIL has further submitted that after award of the transmission project, the petitioner collected co-ordinates from PGCIL for termination of the transmission lines at the above sub-stations. Subsequently, the same information was furnished to CEA by PGCIL which in turn was communicated to Punjab State Power Corporation Limited vide CEA letter No. 164/ER/2011/Sterlite/394-401 dated 28.4.2011 with copy to the petitioner confirming the coordinates furnished by Powergrid. PGCIL has further submitted that the coordinates provided by it and confirmed by the CEA may be considered and the transmission line of the petitioner should be terminated at the respective Powergrid sub-stations at Bongaigaon, Siliguri, Purnea and Bihar Sharif.

8. PFC Consulting Ltd which acted as the Bid Process Coordinator in its affidavit dated 16.12. 2011 has submitted that in line with the requirement of clause 1.5 (a) of the Request for Proposal (RfP) document, the BPC is required to provide to the bidders a Survey Report for the Project containing information regarding the transmission lines, i.e. voltage level, line configuration (i.e. S/C or D/C), indicative route alignment, conductor type of terrain likely to be encountered etc. To meet the above obligations of the BPC, a consultancy firm, M/s Advance Micronic Devices Ltd. (AMD L) was engaged to carry out the preliminary survey of the project and prepare a survey report. AMD L carried out the survey and provided the details viz. technical profile of the project (including coordinates of the start point and the end point of the transmission line), Meteorological data (including rainfall, temperature, land use/land cover, wind zone etc.), crossing details (Forest, river, highways, roads, railways power line), schedule of angle points (including coordinates of the angle points). The coordinates of the start point, end point and the angle points of the project were the

GPS coordinates obtained by AMDL through hand held GPS equipments. The survey report included, along with other details, the coordinates of the start and end point and the angle points. The Survey Report was finalized in consultation with CEA. The coordinates of start and end points provided in the survey report for the transmission lines are as follows:-

Start and end points	Coordinates provided by BPC In the Survey Report	Coordinates provided by PGCIL as in Petition
Purnea	87° 56' E and 25° 48' N	87° 28' 55" E and 25° 44' 51" N
Biharshariff	85° 36' E and 25° 06' N	85° 30' 38" E and 25° 09' 44" N
Bongaigaon	90° 19' E and 26° 28' N	90° 22' 15" E and 26° 27' 27" N
Siliguri	88° 30' E and 26° 45' N	88° 28' 03" E and 26° 38' 54" N

PFC Consulting has further submitted that the bidders had sought clarification regarding the inter-connection point during the RfP stage. The BPC in its written clarification had stated that the start and end points would be the sub-stations of PGCIL at the respective locations. Relying on clauses 1.5 (a), 2.14.2.3, 2.14.2.4 and 2.14.2.5, the BPC has submitted that in line with the said provisions of the RfP, the bidders were required to verify the details of survey reports if the coordinates of start and end points given in the Survey Report do not match with the coordinates of the terminal sub-stations as subsequently provided by the Powergrid.

9. The petitioner in its rejoinder dated 13.1.2012 has submitted that it is admittedly the case of PFC Consulting that the start and end points as provided in the Survey Report do not match with the coordinates of the sub-stations of PGCIL. The petitioner has further submitted that the self assessment of the coordinates of the 'start' and 'end' points by the bidders as required under the RfP can only be for the route of the transmission lines, and not for the emanating or terminating points which are the policy decisions of PFC Consulting Ltd and there is no reason to assume that such start and

end points would be absurd. The petitioner has submitted that since as per the clarification of the Bid Process Coordinator, the start and end points will be the sub-stations of PGCIL and the obligations for arranging the interconnection point is in accordance with Article 4.2.1 of the TSA, the respondents be directed to provide the interconnection at the start or end point coordinates in accordance with the angle tower summary report or the petition be allowed increase of transmission charges as prayed for in the petition. In response, PGCIL in its affidavit dated 1.2.2012 has submitted that CEA in its letters dated 10.3.2008 and 8.8.2011 has directed PGCIL to implement the sub-station works at its sub-stations at Bongaigaon, Siliguri, Purnea and Biharshariff associated with the termination points of Bongaigaon-Siliguri 400 kV (quad) and Purnea-Bihar Sharif 400 kV (quad) transmission lines. The scope of work to be implemented by PGCIL comprised only of line bays/line reactors at the said sub-stations.

10. In the Record of Proceedings for the hearing dated 7.2.2012, we had directed the petitioner to submit the copy of the query made by the petitioner to BPC regarding the location of the sub-stations for the purpose of interconnection of the transmission lines. We had also directed the BPC to clarify on the basis of the documents in their possession to show that start and end point coordinates supplied by the BPC to the bidders are the same as the coordinates of the existing sub-stations of PGCIL and if not, what is the distance between the existing sub-stations of PGCIL and coordinates of start and end points of the Survey Reports and the covering sheet, clearly indicating the same on a diagram. CTU was directed to submit its views on the actual locations of the sub-stations, the length of the transmission lines from the substations till the end/start points claimed by the petitioner and BPC separately, and involvement of

forest area along the route of Bongaigaon-Siliguri transmission line. CEA was asked to submit its views as to whether the transmission lines were planned for inter-connection with existing sub-stations of PGCIL or new sub-stations were planned at the end/start coordinates given in the Survey Report.

11. The petitioner in its affidavit dated 30.3.2012 in response to the query regarding marking of the coordinates on the toposheets has submitted that BPC had marked the coordinates of the start and end points on the Toposheets of Survey of India for all the three suggested alternative route alignments clearly indicating the sub-stations at these points, and the respective start and end points for the three alternative routes are the same. The petitioner has placed on record a copy of the toposheets which was provided to the bidders by the BPC. In reply to the other query whether the petitioner had made any query to the BPC regarding sub-stations for the purpose of interconnection of transmission lines, the petitioner has submitted that the issue was raised by the participants in the pre-bid meeting held on 12.5.2009 and in response to the query, the BPC had issued a written clarification that the start and the end points would be the sub-stations of PGCIL at the respective locations. However, the petitioner did not raise any specific query on the issue since the same issue was discussed in the pre-bid meeting.

12. PFC Consulting in its affidavit dated 28.3.2012 has submitted that the survey report included among other details the coordinates of the start and the end points and the angle points which were finalized in consultation with the CEA. The coordinates of the start and the end points as provided in the Survey Report do not match with the coordinates of the terminal sub-stations as subsequently provided by PGCIL. BPC

has also submitted the distances between the coordinates of existing sub-stations of PGCIL and the coordinates of the start and the end points of the Survey Report as under:-

(i) Purnea-Biharshariff Line

- (a) Distance between the coordinates of Purnea sub-station as provided by PGCIL vis-à-vis as provided by BPC in the Survey report is Rapproximately 45 kms.
- (b) Distance between the coordinates of Biharshariff sub-station as provided by PGCIL vis-à-vis as provided by BPC in the Survey Report is approximately 11 kms.
- (c) The B-Line length of Purnea-Biharshariff Line as per coordinates provided by PGCIL is approximately 209 kms.
- (d) The B-Line length of Purnea-Biharshariff Line as per coordinates of start and end points provided by BPC in the Survey Report is approximately 247 kms.
- (e) The B-Line length between the coordinates of the first Angle point (AP1) and the last Angle Point (AP133) provided by BPC in the Survey Report is approximately 158 kms.

(ii) Bongaigaon-Siliguri Line

- (a) Distance between the coordinates of Bongaigaon sub-stations as provided by PGCIL vis-à-vis as provided by BPC in the Survey Report is approximately 5 kms.
- (b) Distance between the coordinates of Siliguri sub-station as provided by PGCIL vis-à-vis as provided by BPC in the Survey Report is approximately 11 kms.

- (c) The B-Line length of Bongaigaon-Siliguri Line as per coordinates provided by PGCIL is approximately 190 kms.
- (d) The B-Line length of Bongaigaon-Siliguri Line as per coordinates of start and the end points provided by BPC in the Survey Report is approximately 183 kms.
- (e) The B-Line length between the coordinates of the first Angle point (AP1) and the last Angle point (AP237) provided by BPC in the Survey Report is approximately 163 kms.

PFC Consulting has further submitted that in the RfP and RfQ documents issued to the bidders, a grid map was attached to show that the terminal sub-stations are the existing sub-stations of the PGCIL and has placed the grid map on record.

13. PGCIL in its affidavit dated 29.3.2012 has submitted that CEA and PGCIL were of the view that 400 kV Bongaigaon-Siliguri Line and 400 kV Purnea-Biharshariff Line of the petitioner should be terminated at the existing 400 kV sub-stations of PGCIL at Bongaigaon, Siliguri, Purnea and Biharshariff. The actual locations of these sub-stations were not sought from PGCIL during the bidding process. After the project was awarded, the petitioner collected the coordinates from PGCIL for termination of their transmission lines for the above sub-stations. Subsequently, the information was also furnished to CEA who confirmed the coordinates furnished by PGCIL and communicated the same to Punjab State Power Corporation Limited. PGCIL has indicated the bee-line distances from the start/end points coordinates given in the Survey Report and the angle tower summary report to the existing sub-stations of PGCIL as under:-

Sub-stations	Powergrid		Coordinates provided by BPC in the Survey Report		Coordinates provided in the angle tower Summary Report		BEE line distance between (A) & (B)	BEE line distance between (A) & (C)
	(A)		(B)		(C)			
	Longitude	Latitude	Longitude	Latitude	Longitude	Latitude	(km)	(km)
Siliguri	88° 28' 03" E	26° 38' 54" N	88° 30' 0" E	26° 45' 0" N	88.7485° E i.e. 88° 44' 55" E	26.5638° N i.e. 26° 33' 50" N	11.8	29.5
Bongaigaon	90° 22' 15" E	26° 27' 27" N	90° 19' 0" E	26° 28' 0" N	90.3974° E i.e. 90° 23' 51" E	26.4574° N i.e. 26° 27' 27" N	5.5	2.7
Purnea	87° 28' 55" E	25° 44' 51" N	87° 56' 0" E	25° 48' 0" N	86.9993° E i.e. 86° 59' 57" E	25.6845° N i.e. 25° 41' 4" N	45.6	48.9
Biharshariff	85° 30' 38" E	25° 09' 44" N	85° 36' 0" E	25° 06' 0" N	85.5323° E i.e. 85° 31' 56" E	25.1663° N i.e. 25° 9' 59" N	11.4	2.2

14. As regards the location of the Bongaigaon sub-station in the forest area, PGCIL has clarified that the land identified for construction of Bongaigaon sub-station by the State Authorities was a revenue land. The cost of land fixed by the revenue authority was paid to the State Govt. and the land was transferred by the State Govt. to PGCIL. Subsequently, the DFO informed that the transferred land falls in the forest area. Accordingly, a proposal was prepared for diversion of 35.2 Hectares of land as recommended by State Govt. which was approved by MoEF. The involvement of forest area along the route of 400 kV Bongaigaon- Siliguri Line is to be assessed by the petitioner based on its actual route survey.

15. CEA in its letter dated 27.3.2012 has submitted that 400 kV Bongaigaon-Siliguri and Purnea-Biharshariff lines being developed by the petitioner were planned in coordination with the constituents of Eastern Region, Northern Region, North-Eastern Region and PGCIL at various Standing Committee meetings of the respective regions for interconnection with the existing 400 kV Bongaigaon, Siliguri, Purnea, Biharshariff sub-stations of PGCIL, and not with any new sub-stations at the end/start coordinates given in the Survey report of BPC.

16. PSPCL in its reply has submitted that in case of Siliguri and Purnea, the grid maps show two sub-stations each. The COD of the various sub-stations are as under:

Sub-station	COD
Purnea Old	1.11.1986
Purnea New	26.8.2003
Bihar Sharif	7.9.1991
Siliguri Old 220 kV	13.8.1986
Siliguri New 400 kV	28.7.2002
Bongaigaon	21.8.1999

PSPCL has submitted that the project awarded to the petitioner was to construct the following lines:

- (a) 400 kV D/C Quad line from Bongaigaon (DOCO 21.8.1999) to Siliguri New (DOCO: 28.7.2002)
- (b) 400 kV D/C Quad line from Purnea New (DOCO: 26.8.2003) to Bihar Sharif (DOCO: 7.9.1991)

PSPCL has submitted that the petitioner is to construct the transmission lines from the existing Powergrid sub-stations which are operational for more than 5 years and there is no scope or ground for confusion or uncertainty over the start point and the end points of the transmission lines since the relevant sub-stations were clearly identified and already existing. PSPCL has further submitted that since about 5 months time was available between the issue of RfP and the submission of the bid, the petitioner could have made the actual survey of the start and end points before submitting the bids. PSPCL has submitted that in view of the provision in para 1.5.1.1 of the RfQ where the scope of work includes “all activities for the project including survey” and disclaimers in para 1.5 and 2.14.2.5 of the RfP, there is no justification for the petitioner to claim enhanced transmission charges on the ground that data provided in the Survey Report was inaccurate. PSPCL has also submitted that the

clarification given by BPC settles the position beyond doubt that PGCIL sub-stations which have been in service for more than 5 years will be the starting and ending points of the transmission lines. PSPCL has prayed for rejection of the claim of the petitioner for enhanced transmission charges.

17. The replies of other respondents are discussed as under:

(a) BRPL has submitted that the petition is not maintainable as the petitioner has sought to invoke section 62 of the Act for tariff determination in a case of adoption of tariff under section 63 of the Act. There is no provision in the TSA to compensate the petitioner on the claim of increased line length as the petitioner has unconditionally accepted the LOI in accordance with the RfP. It has been further submitted that the claim of the petitioner for change in law under Article 12.2.1 of the TSA is not correct since change in line length cannot be justified to be covered under change in law.

(b) Rajasthan Distribution Companies have submitted that the petition is not maintainable as section 62 is not applicable in this case. There is negligence and failure on the part of the petitioner to correctly ascertain the length of the line before bidding. As there is no fault on the part of the beneficiaries, there is no justification for loading extra tariff as claimed.

(c) Haryana Utilities have submitted that the petition is not maintainable since there is no provision to adopt section 62 once the bidding has been concluded under section 63 of the Act. The bidding was for construction of 400 kV double circuit lines between identified and existing Powergrid sub-stations which are important grid sub-stations in the NER and ER network and there could be no confusion regarding the start and end

points of the lines to be constructed. It has been submitted that after award of the contract, the first activity to be undertaken is the survey and determination of the route and finalization of the exact tower locations and therefore, at the initial exercise itself, the actual line length would be disclosed or determined. Had the issue of increased line length been raised from the very beginning before the start of construction or before the placement of order for tower materials and conductors etc., it was possible that the tender would have been reopened with re-bidding. It has been further submitted that if tariff were to be increased at this stage as claimed by the petitioner, it would amount to a post tender development which directly goes to favour the winning bid at a much later stage, thereby overturning the very bidding process itself. Haryana Utilities have submitted that there is no ground or justification for the petitioner to claim higher tariff on account of line length increase.

(d) Tata Power Delhi Distribution Limited has submitted that there are various provisions in the RfQ, RfP and TSA which substantiate that it is the petitioner's responsibility to get the Start/End points verified and vetted by any independent agency if it so desired before submission of the bid. It has been submitted that any change in the bid price for any reason whatsoever, especially when bidding documents were clear on the personal responsibility of the bidder to satisfy itself to all the conditions and not to solely rely on the data provided in the RfP would tantamount to change in bidding conditions, thereby nullifying the entire bidding process. It has been submitted that claim of the petitioner for increase of transmission charges on account of change in the geographical coordinates of 'start' and 'end' points be rejected.

18. The petitioner in its common rejoinder dated 9.1.2013 has submitted that though the Commission has adopted the tariff under section 63 of the Act, the power to determine tariff/transmission charges with respect to the transmission system being established by the petitioner for additional scope of work and corresponding revision of transmission charges lies within the power of the Commission under section 62 read with section 79 of the Act. As regards the disclaimer in the RfP, the petitioner has submitted that the self assessment of the bidder can only be for the route of the transmission line and not for the emanating and terminating points. Further, it has been pleaded that "the BPC never clarified that the start and end points would be the existing sub-stations or existing new sub-stations of PGCIL". BPC had provided alongwith the Final Route Alignment Report, a detailed data sheet as part of the Survey Report which showed the information with regard to the 'start' and 'end' points clearly marked and identified as gantries and sub-stations drawn on the Survey of India toposheet for the transmission lines with clear landmarks on the toposheets as well as data sheet. The petitioner has submitted that it relied on the 'start' and 'end' points/gantry/angle points in the detailed data sheet of the Survey Report and accordingly, prepared and submitted its financial bid. The petitioner has further submitted that as there are multiple sub-stations at Purnea and Siliguri, so the relevant termination points would be the coordinates only.

19. We have heard the learned counsel for the petitioner and the learned counsel on behalf of BRPL and the representative of the respondents. We have considered the pleadings of the parties and the documents available on record. In our view, the following issues arise for consideration:

(a) Maintainability of the Petition

(b) Provisions in the bid documents with regard to the liability of the Bid Process Coordinator and the bidders;

(c) Whether the petitioner had made the bids in accordance with the bid documents?

(d) Whether there is change in the scope of the project ?

(e) If so what relief can be granted by the Commission?

The issues have been dealt with in the succeeding paragraphs.

Maintainability of the Petition

20. The petition has been filed under Section 62 read with Section 63 of the Electricity Act, 2003 (the Act) seeking determination of additional tariff/transmission charges for the additional scope of work and corresponding revision of transmission charges adopted by the Commission in its order dated 28.10.2010. During the hearing of the petition on 8.9.2011, the learned counsel for the petitioner in response to our query had submitted that the petition is maintainable under Section 62, 63 and 79 of the Electricity Act, 2003. The respondents, particularly the LTTCs, have argued that the petitioner has wrongly invoked the jurisdiction of this Commission as the role of this Commission for tariff determination under section 63 of the Act is very limited. It has been further argued that section 62 is not applicable in this case and the issue of revising the tariff on proportionate basis would tantamount to interfering with the bid conditions and evaluation criteria in the RfP and is also against section 63 of the Act. The petitioner has submitted that this Commission has the function to regulate tariff of the inter-State transmission of electricity under the Act and therefore, there is no legal bar for adjudication of dispute by the Commission only because the Commission has adopted the tariff under section 63 of the Act. It has been further submitted that the

power to determine additional tariff/transmission charges with respect to the transmission system being established by the petitioner for the additional scope of work and corresponding revision of transmission charges lies within the power of this Commission under section 62 and 79 of the Act.

21. We have considered the submission of the parties. Section 63 of the Act provides that "notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government." The Section begins with a non obstante clause. It means that Section 63 is an exception to Section 62 of the Act. Section 62 is a substantive provision which authorizes the Appropriate Commission to determine the tariff in accordance with the Act for transmission of electricity. The non-obstante clause in section 63 gives the said section an overriding effect on section 62 of the Act in certain circumstances. Where the tariff has been determined through the competitive bidding under Section 63 of the Act, the Commission is required to adopt the tariff so determined. Therefore, where the tariff has been adopted under section 63 of the Act, the tariff cannot be further re-determined under Section 62 of the Act. In the present case the tariff of the transmission system was discovered through the process of competitive bidding in accordance with the guidelines issued by the Ministry of Power, Government of India vide Resolution No. 11.5.2005-PG (I) dated 17.4.2006. The Commission which has been vested with the power to regulate the inter-State transmission of electricity under Section 79(1)(c) of the Act has adopted the tariff under section 63 of the Act. Section 79(1)(f) of the Act provides that the Central Commission shall discharge the function "to adjudicate upon disputes involving

generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration." The dispute between the petitioner and the Long Term Transmission Customers has arisen on account of the discrepancies between the coordinates of the transmission lines given in the RfP documents and the actual coordinates of the sub-stations of PGCIL where the transmission lines would terminate and the resultant change in the scope of work which has implication on tariff of the transmission systems. Since the dispute is between the petitioner which is a transmission licensee and the Long Term Transmission Customers with regard to the transmission tariff which was adopted under section 63 read with section 79(1)(c) of the Act, the petition is maintainable under Section 79 (1) (f) read with Section 63 of the Act.

22. There is another reason as to why the petition is maintainable. Under Article 16.3.1 of the Transmission Service Agreement between the petitioner and the Long Term Transmission Customers, where any dispute arises from a claim made by any party regarding any provision of the Agreement, such dispute shall be adjudicated by the Appropriate Commission. Schedule 2 of the Transmission Service Agreement provides for the specific scope of the project under the transmission scheme. The scope of the project is based on the presentation made by the Bid Process Coordinator during the bidding process as per the provision of the RfQ and RfP. It is the case of the petitioner that the scope of work given in the RfQ document is different from the actual scope of work to be executed on the ground as a result of which dispute has arisen with regard to the scope of the project. The petitioner is stated to have written a letter dated 9.3.2011 to Punjab State Power Corporation Limited which is the lead Long Term Transmission Customer of the project to resolve the issue of

construction of additional transmission line of 80 kms. The other party is required to react within 30 days of the notice and furnish its counter-claim and defences regarding the dispute and all written materials in support of its counter-claims. If the parties fail to resolve the dispute within the period prescribed in Article 16.2.3 of the TSA, the dispute shall be referred for dispute resolution in accordance with Article 16.3 of the TSA. Though the LTTCs have not initially responded to the letter of the petitioner, they have subsequently convened a meeting on 23.11.2012 and discussed the proposal of the petitioner and rejected it. Affidavit to that effect has been filed by the lead LTTC and some other beneficiaries. Therefore, a dispute has arisen which can also be adjudicated by the Commission under Article 16.3 of the TSA.

Provisions in the Competitive Bidding Documents

23. The petitioner's case is that the RfQ, RfP and Transmission Service Agreement (TSA) did not specify the 'start' and 'end' point of the transmission lines to be constructed by the Transmission Service Provider. Therefore, a query was raised by the participating bidders during the pre-bid conference to the BPC regarding the inter-connection points of the transmission lines which was clarified by the BPC that it would be sub-stations of PGCIL at the respective locations. The above clarification did not provide exact connection points/ coordinates as there were no sub-stations of PGCIL at the respective locations. The petitioner had no option but to rely on the detailed survey report dated 22.4.2009 as provided by the BPC. Subsequently, on the request of the petitioner, PGCIL in its letters dated 23.6.2010, 3.8.2010 and 21.2.2011 had provided the tentative layout of the drawing of 400 kV Bongaigaon, Purnea, Biharshariff and Siliguri sub-stations. As there was variance between the coordinates given in the Survey Report and the coordinates of the existing

sub-stations of PGCIL, the petitioner took up the matter with the Punjab State Power Corporation Limited seeking the confirmation whether it would extend the transmission line to connect to the existing sub-stations of CTU which was likely to result in additional line length of 80 kms and sought its intervention to urgently resolve the issue as construction of additional line length may result in additional line and substantial cost escalation. CEA in its letter dated 28.4.2011 has confirmed that the GPS coordinates given by PGCIL are in order and that the transmission lines of the petitioner have to be terminated at the respective gantries of PGCIL substations. As the issue has not been resolved by the lead Long Term Transmission Customers, the petitioner has approached the Commission for adjudication of the dispute.

24. Before we advert to the issue at hand, it would be appropriate to deal in brief the provisions of RfQ and RfP of the project. The Government of India, Ministry of Power vide its notification No. 11/12/2006-PG dated 16.6.2007 notified PFC to be the Bid Process Coordinator for the purpose of selection of Bidder as Transmission Service Provider (TSP) to establish the "Transmission Scheme for enabling import of NER/ER surplus power by NR" through tariff based competitive bidding. The BPC issued a public notice in October 2008 inviting all prospective bidders for issue of Request for Qualification to qualify/shortlist the Bidders for participation in the next stage of bidding i.e. Request for Proposal as part of the process of selection of TSP. Clause 1.3.2 of the RfQ provided for the scope of work of the project as under:

"1.3.2 The specific scope of work under "Transmission Scheme for enabling import of NER/ER surplus power by NR" is as follows:

- Bongaigaon-Siliguri 400 kV quad D/C
- Purnea-Bharsharif 400 kV quad D/C"

Clause 1.4 of RfQ provided that a Grid Map indicating the location of the Project was enclosed for information and reference of the bidders and the said Grid Map was available at Section-5 of the RfQ. The Grid Map did not indicate the exact coordinates of the transmission lines proposed to be built by the successful bidder in the competitive bidding process.

25. The bidders qualified at the RfQ stage were issued RfP documents in order to enable them to submit the non-financial and financial bids for the project. The RfP contained the following disclaimer:

“The RfP document is not an agreement or an offer to the bidders or any parties. The purpose of this RfP is to provide the interested parties with the information to assess the formulation of the bids. The RfP is based on materials and information available in the public domain.

3. The RfP has been prepared in good faith. Neither the BPC or its employees or advisors or consultant make any representation, or warranty, express or implied as to the accuracy or reliability or completeness of information in RfP. Bidders shall satisfy themselves that the RfP document is complete in all respect and intimate any discrepancy.”

Further, RfP defines the ‘Survey Report’ to “mean the report containing initial information regarding the Project and other details provided as per the provisions of clause 1.5 (a) of this RfP”. Clause 1.5 of the RfQ lists out the tasks to be carried out by the BPC. Clause 1.5(a) provides as under:

“1.5 The BPC has initiated development of the Project and shall be responsible for the tasks in this regard as specified here under:

(a) Provide to the bidders a Survey Report for the project at least ninety days prior to the bid deadline. The Survey Report will contain information regarding the transmission line, i.e. voltage level, line configuration (i.e. S/C or D/C), indicative route alignment, conductor type, conductor configuration and type of terrain likely to be encountered.

Provided that neither the BPC, its authorized representative, any of the LTTCs, nor their directors, employees or advisors/consultants make any representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions made in the Survey Report, or the accuracy, completeness or reliability of information contained therein, and shall incur no

liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of such Survey Report, even if any loss or damage is caused to the Bidders by any act or omission on their part.”

26. Clause 2.12 of the RfP provides for clarifications by BPC on bid documents and pre-bid meeting as under:

“2.12.1 The bidders may seek clarifications or suggest amendments to the RfP in the writing, through a letter or by fax (and also soft copy by e-mail) to reach the BPC at the address indicated in Clause 2.23 within the date and time mentioned in Clause 2.16.2. For any such clarifications or amendments the Bidders should adhere to the format as per Annexure-7.

2.12.2 xxxxx

2.12.3 The purpose of the pre-bid meeting will be to clarify any issues regarding the RfP, including in particular, issues raised in writing by the Bidders as per the provisions of Clause 2.12.1.

2.12.4 xxxx

2.12.5 xxxx

2.12.6 In case Bidders need any further clarifications not involving any amendments in respect of final RfP, they should ensure that written request for such clarification is delivered to the BPC at least fifteen (15) days prior to the Bid Deadline as mentioned in Clause 2.16.1. The BPC may issue clarifications only, as per the sole discretion, which is considered reasonable by it. Any such clarification issued shall be sent to all the Bidders to whom the RfP has been issued. Clarifications sought after this date shall not be considered in any manner and shall be deemed not to have been received. There shall be not extension in Bid Deadline on account of clarifications sought as per the clause 2.12.6.”

27. Clause 2.14.2 of the RfP provides that the bidders shall inform themselves fully about the following:

“2.14.2.1 The Bidders shall make independent enquiry and satisfy themselves with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on his Bid. Once the Bidders have submitted their Bids, the Bidders shall be deemed to have inspected and examined the site conditions (including but not limited to its surroundings, its geological condition and the adequacy of transport facilities to the site), the laws and regulations in force in India, the transportation facilities available in India, the grid conditions, the adequacy and conditions of roads, bridges, railway sidings, ports, etc. for unloading and/or transporting heavy places of material and has based its design, equipment size and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the transmission of power. Accordingly, each Bidder acknowledges that, on being selected as Successful Bidder and on acquisition of one hundred percent (100%) of the equity shares of the East-North Interconnection Company Ltd., the TSP shall not be

relieved from any of its obligations under the RfP Project Documents nor shall the TSP be entitled to any extension in Scheduled COD mentioned in this RfP or financial compensation for any reason whatsoever.

2.14.2.2 xxxx

2.14.2.3 Bidders may visit the route of the Transmission Lines associated with the Project and the surrounding areas and obtain/verify all information which they deem fit and necessary for the preparation of their Bid.

2.14.2.4 The BPC has carried out a survey of the Transmission Lines associated with the Project and shall provide each Bidder with its Survey Report of the Project. Bidders in their own interest should carry out required surveys and field investigation for submission of their Bid.

2.14.2.5 Failure to investigate the route of the Transmission Lines associated with the Project and to examine, inspect site or subsurface conditions fully shall not be grounds for a Bidder to alter its Bid after the Bid Deadline nor shall it relieve a Bidder from any responsibility for appropriately eliminating the difficulty or costs of successfully completing the Project.

2.14.2.6 xxxx

2.14.2.7 xxxx"

28. A perusal of the above provisions of RfP reveals that the BPC is required to provide the bidders with the Survey Report of the project which shall contain information regarding the transmission line, i.e. voltage level, line configuration (i.e. S/C or D/C), indicative route alignment, conductor type, conductor configuration and type of terrain likely to be encountered. In the context of the present petition, the term "indicative route alignment" is important. The term has not been defined in the RfP. However, the scope of the term can be gathered from the meaning ascribed in the dictionary. The word "indicative" means "suggestive or giving indication of", the word "route" means "way taken from one place to another" and the word "alignment" means "to ally; to place in or bring into line" Thus the term "indicative route alignment" in ordinary dictionary meaning would mean suggestive route of the transmission line from one place to another to ally with the existing ones. The "indicative route alignment" in the Survey Report should include the entire route of the transmission

lines with both start and end points. The RfP contains a general disclaimer and a specific disclaimer under clause 1.5(a) which seek to exempt the BPC or its authorized representative, any of the LTTCs or their directors, employees or advisors/consultants from any responsibility or liability in respect of the statement or omissions made in the Survey Report or the accuracy, completeness or reliability of information contained in the Survey Report. Clause 2.14.2.3 requires the bidders to visit the route of the transmission line associated with the project and surrounding areas which they deem fit for the purpose of preparation of the bid. Clause 2.14.2.4 provides that BPC will provide a Survey Report and the bidders in their interest should verify the required survey and field investigations for the purpose of preparation of the bids. As per clause 2.12.6, the bidders have the opportunity to seek further clarification not involving amendment in respect of the final RfP at least 15 days prior to the bid deadline and the BPC may issue the clarification which is considered reasonable by it. It emerges from the bid documents that though there is a disclaimer in the RfP document with regard to the accuracy, reliability or completeness of the information contained in the Survey Report, the bidders have an opportunity to seek further clarification on the report before the bid deadline. There is also a mandate on the Bid Process Coordinator to issue the clarification to all the bidders to whom the RfP has been issued. Thus the disclaimer contained in the RfP cannot fully absolve the BPC from its responsibility with regard to the accuracy, reliability or completeness of the Survey Report as BPC is under obligations to issue necessary clarification on the contents of the survey report if sought by the bidders.

29. CEA in its letter dated 27.3.2012 has submitted that 400 kV Bongaigaon-Siliguri and Purnea-Biharshariff lines being developed by the petitioner were planned in

coordination with the constituents of Eastern Region, Northern Region, North-Eastern Region and PGCIL at various Standing Committee meetings of the respective regions for interconnection with the existing 400 kV Bongaigaon, Siliguri, Purnea, Biharshariff sub-stations of PGCIL, and not with any new sub-stations at the end/start coordinates given in the Survey report of BPC. The representative of the Punjab State Transmission Corporation Limited (PSPCL) submitted during the hearing on 29.1.2013 that the summary record of the 21st meeting of Standing Committee clearly specifies that the transmission system is part of the system strengthening in the Northern Region and right from the stage of approval, there was no ambiguity about the start and end points as the transmission line was to connect Bongaigaon and Siliguri. We are of the view that the bidders were not parties to the decision of the planning authority in the Standing Committees and other forums and therefore, the petitioner had no access to the said decision except to the extent it is reflected in the bid documents. PFC Consulting in its affidavit dated 28.3.2012 has submitted that the Survey Report included among other details the coordinates of the start and the end points and the angle points which were finalized in consultation with the CEA. If that be the case, there was no reason as to why the exact coordinates of the sub-stations of PGCIL was not given to PFC to reflect in the bid documents or to utilize it for the purpose of preparation of the Survey Report. Even the Survey Report does not say that the start and end coordinates are the existing sub-stations of PGCIL. It appears that due to communication gap between the various agencies and lack of verification and cross verification of the details, the Survey Report and Angle Tower data which have been provided to the bidders are so significantly different from the actual coordinates of PGCIL sub-stations.

Petitioner's compliance with bid documents

30. The BPC got a Survey Report of the final route alignment prepared by the consultant Advanced Micronic Devices Limited for both the transmission lines. The technical profiles of the projects as per the survey report are as under:-

(a) 400kV Quad D/C Purnea Bihar Sharif Transmission Line

Start Point: Purnea in Bihar (Longitude 87D 56M E and Latitude 25D 48M N).

End Point: Bihar Sharif in Bihar (Longitude 85D 36M E and Latitude 25D 6M N)

Bee-Line length: 190.05 km.

Alternative Route Length 1- 209.893 km

Alternative Route Length 2- 219.2 km

Alternative Route Length 3- 216.5 km

(b) 400 kV Quad D/C Bongaigaon Siliguri Transmission Line

Start Point: Bongaigaon in Assam (Longitude 90D 19M E and Latitude 26D 28M N).

End Point: Siliguri in West Bengal (Longitude 88D 30M E and Latitude 26D 45M N).

Bee-Line Length: 210.5 km

Alternative Route Length1- 217.417 km

Alternative Route Length 2- 228.3 km

Alternative Route Length 3- 230.2 km

31. The RfP documents were issued to the shortlisted bidders w.e.f 20.4.2009. The Bid Process Coordinator in its letter No.03:14:ITP.07-ENCIL-RfQ dated 22.4.2009 supplied the copy of the Survey Report to the bidders including the

petitioner in compliance with Clause 1.5 (a) of the RfP. The said letter is extracted as under:

“This has the reference to the RFP Documents (i.e. Request for Proposal (RfP) and Transmission Service Agreement (TSA) purchased by you on April 22, 2009.

In line with the requirement of Clause 1.5 of the RfP, the following details are furnished for your information and further action please:

- (a) The Survey Report for the Project is enclosed herewith. It is to mention that neither the BPC, its authorized representative, any of the Long Term Transmission Customer(s), nor their directors, employees or advisors/ consultants make any representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions made in the Survey Report, or the accuracy, completeness or reliability of information contained therein, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of such Survey Report, even if any loss or damage is caused to the Bidder by any act or omission on their part.
- (b) The approval of Government of India, Ministry of Power for laying of over head transmission lines under Section 68 of Electricity Act vide letter No. 12/4/09-PG dated March 25, 2009.
- (c) As there are no substations, switching stations or HVDC terminal or Inverter stations in the subject transmission scheme, the Initiation of land acquisition is not required.
- (d) There are no forests stretches in the route alignment as per the survey report, Initiation of process of seeking forest clearance is not required.
- (e) The Bid Bond is to be in the name of East-North Interconnection Company Limited, New Delhi.”

32. Discussion in the pre-bid meeting was held on 12.5.2009 in accordance with the provisions of Clause 2.12.3 of the RfP. The BPC has clarified about the queries raised by the bidders on the RfP documents in its letter dated 15.6.2009. Serial No. 5 of the clarification is extracted as under:-

Ser No.	Document	Clause/Article No. in RfP	Clarification required	Response of Bid Process Coordinator
5.	RfP	1.2	<p>Please provide the details of the interconnection Points for the Transmission Lines.</p> <p>The details should be provided by the BPC at least 30 days prior to the Bid Deadline.</p> <p>Designing of the transmission system depends on the technology used at the origin and termination points.</p>	<p>The start and end points will be the sub-stations of PGCIL at the respective locations, and the obligation for arranging for inter-connection points shall be as per the provisions of the Article 4.2.1 of the TSA.</p>

33. It is apparent from the above clarification that the bidders had raised the question regarding the interconnection points of the transmission lines to which BPC had clarified that the start and end points would be the interconnection points of PGCIL. It has been further clarified that the obligations for providing the interconnection would be as per Article 4.2.1 of the TSA. The BPC has neither stated that the substations of PGCIL are the existing substations at the respective locations nor has given the coordinates of the locations of the existing substations. PGCIL in its affidavit has submitted that it was never consulted by the BPC during the bidding process. Let us consider the provision regarding arranging the interconnection in the TSA. Article 4.2.1 of the TSA provides as under:-

- “4.2.1 Subject to the terms and conditions of this Agreement, Long Term Transmission Customers, at their own cost and expense, undertake to be responsible;
- (a) For assisting and supporting the TSP in obtaining the Consents, Clearances and Permits required for the Project and in obtaining any applicable concessions for the Project, by providing letters of recommendation to the concerned Indian Government Instrumentally, as may be requested by the TSP from time to time;
 - (b) For arranging and making available the interconnection Facilities to enable the TSP to connect the Project;”

It is clear from the above provision that it is the responsibility of the Long Term Transmission Customers to arrange and make available the interconnection facilities to enable TSP to connect to the project. Therefore, the Long Term Transmission Customers, particularly the lead LTTC should have taken steps to provide clarity on the interconnection points of the transmission lines.

34. From the materials placed on record by the BPC, PGCIL and CEA, it emerges that there are three separate coordinates for the start and end points of the transmission lines – first one provided in the Survey Report, second one provided in the angle tower summary report and the third one provided by PGCIL. A comparative

chart of the said coordinates has been provided by PGCIL in its affidavit dated 29.3.2012 which has been extracted in para 13 above. It is observed that the angle tower summary report which forms part of the Survey Report gives a different set of coordinates from those given in the survey report. It is the responsibility of the BPC to ensure that the Survey Report supplied to the bidders do not contain any discrepancy. When two different sets of coordinates were given in the Survey Report, the bidders could choose to take decisions on their own and decide the route of the transmission lines which would optimize their cost. Further, the BPC in its affidavit dated 16.12.2011 has submitted that the coordinates of the start point, end point and angle point of the project were the GPS coordinates obtained by AMDL through the hand held GPS equipment and the Survey Report was finalized in consultation with the CEA. CEA in its letter dated 27.3.2012 has submitted that 400kV Bongaigaon Siliguri and 400kV Purnea Bihar Sharif transmission lines were planned in coordination with the constituents of Eastern Region, Northern Region, North-Eastern Region and PGCIL at various Standing Committee meetings of the respective regions for inter-connection with the existing 400 kV Bongaigaon, Siliguri, Purnea, and Biharshariff sub-stations of PGCIL and not with any new sub-stations at the end or start coordinates given in the survey report of BPC. In that event, the Survey Report should have indicated the GPS coordinates of the sub-stations of PGCIL as the start and end points of the transmission lines. The Survey Report is based on the coordinates of start and end points which are substantially different from the actual coordinates of the existing sub-stations of PGCIL. PGCIL in its affidavits dated 20.10.2011 and 29.3.2012 has submitted that the actual locations of the sub-stations were not sought by the BPC from PGCIL during the bidding process. From the submissions of BPC, PGCIL and CEA, it is clear that the GPS coordinates of the existing sub-stations of PGCIL were

not taken into consideration while finalizing the Survey Report. When the survey report was provided to the bidders during the RfP stage, a query was raised by some bidders to provide the details of inter-connection points for the transmission lines. In reply to the query, the BPC has clarified that the end and the start points are the sub-stations of the PGCIL and the responsibility for arranging the inter-connection is that of the Long Term Transmission Customers. In that scenario it is natural for the bidders to assume that there is a likelihood of new sub-stations coming on the GPS coordinates given in the Survey Report. The learned counsel for the petitioner submitted during the hearing that the BPC had clarified that the start and the end points would be the sub-stations of PGCIL at the respective locations and the petitioner was under the expectation that the sub-stations would be set up as per the coordinates of the start and end points indicated in the RfP. We find considerable force in the argument of the learned counsel for the petitioner. Moreover, BPC has never clarified that the bidders should consult the PGCIL with regard to the exact locations of the sub-stations of PGCIL before submitting the bids.

35. We had directed the BPC during the hearing on 7.2.2012 to clarify on the basis of the documents in their possession to show that the start and the end points coordinate supplied by the BPC to the bidders are the same as the coordinates of the existing sub-stations of the PGCIL and if not what is the distance between the existing sub-stations of the PGCIL and the coordinates of the start and the end points of the survey report and the covering sheet. The BPC in its affidavit dated 28.3.2012 has submitted that the coordinates of start and end points as provided in the Survey Report do not match with the coordinates of the terminal sub-stations as provided by

PGCIL. BPC has also submitted the distance between the coordinates of the sub-stations of the PGCIL and those provided by BPC in the Survey Report as under:-

Name of the sub-station	Coordinates given by PGCIL	Coordinates given by BPC	Distance between Coordinates given by PGCIL and by BPC
Purnea sub-station	87° 28' 55" E 25° 44' 51" N	87° 56'E 25° 48'N	45 km
Biharshariff sub-station	85° 30' 38" E 25° 09' 44" N	85° 36'E 25° 06'N	11 km
Bongaigaon sub-station	90° 22' 15" E 26° 27' 27" N	90° 19'E 26° 28'N	5 km
Siliguri sub-station	88° 28' 03" E 26° 38' 54"N	88° 30'E 26° 45'N	11 km

36. It is evident from the above submission of BPC that there is discrepancy between the length of the transmission lines for which bids were invited and the length as per the actual locations of the sub-stations of PGCIL. The above information has also been confirmed by PGCIL in its affidavit dated 29.3.2012. In our view, it stands established on the basis of the submissions of PGCIL and BPC that the coordinates given in the Survey Report as part of the RfP document are substantially different from the coordinates of the sub-stations of PGCIL. There is no rational explanation for the discrepancy between the coordinates in the Survey Report and the actual coordinates of PGCIL sub-stations. In the absence of any provision in the Bid documents or any clarifications during the bid process that the exact coordinates of the sub-stations of PGCIL should be checked by the bidders with PGCIL before submitting the bids, we cannot hold that the bid submitted by the petitioner was not in accordance with the bid documents and the petitioner has submitted the bid on wrong assumption that the sub-stations would be at the start and end points as given in the Survey Report. In our view, the disclaimer cannot cover a wrong presentation in the Survey Report about the start and end points of the coordinates.

37. The respondents have submitted that the petitioner should have checked the location of the sub-stations of PGCIL before submitting the bid. The respondents have

further submitted that even after award of the project, the respondent could have undertaken a survey which would have disclosed the actual line length of the transmission lines. In our view, BPC which carried out the bidding on behalf of the LTTCs could have checked all the relevant details, particularly with regard to the transmission lines and its interconnection points and included in the bid documents. It is evident from the pleadings of the parties that PGCIL was not consulted at the time of bidding. The firm which was assigned the survey of the route has taken the start and end coordinates of both the lines where the sub-stations of PGCIL did not exist and the BPC has not taken care to cross check with PGCIL who is required to provide interconnection to the transmission line. Under these circumstances, the bidder cannot be faulted with assuming the start and end points given in the Survey Report. However, the petitioner cannot be absolved of its responsibility to rectify the problem at the earliest opportunity. PGCIL has provided the details of the substations for inter-connection on 23.6.2010, 3.8.2010 and 22.2.2011 which means that the petitioner first came to know about the discrepancy on 23.6.2010. The petitioner could have immediately taken up the matter with LTTCs. The application of the petitioner for transmission licence was pending with the Commission at that time and was finally disposed of on 28.10.2010. The petitioner could have agitated this issue during the hearing of the petition so that appropriate decision could have been taken before the petitioner started executing the work.

38. Another point of contention of the petitioner is that BPC in its clarification dated 29.4.2009 has stated that there are no forest stretches in the route whereas Bongaigaon sub-station of PGCIL is located in the centre of Satbhendi Reserved Forest. The petitioner has claimed that it is forced to incur capital expenditure of ₹ 2

crore towards payment of afforestation cost apart from being subjected to lengthy procedure and delay involved in obtaining all clearances for construction of transmission line in the reserved forests. BPC has not commented anything on this issue. We had directed PGCIL to submit its view on involvement of forest area in the route of Bongaigaon Siliguri Transmission Line. PGCIL in its affidavit dated 29.3.2012 has submitted as under:-

"The land identified for construction of Bongaigaon sub-station by the State Authorities was a revenue land. The cost of land fixed by revenue authority was paid to State Govt. and the land was transferred by the State Govt. to POWERGRID (then NEEPCO). However, later DFO informed that the transferred land falls in forest area. Accordingly, a proposal was prepared for diversion of 35.2 Ha land as recommended by State Govt. which was accorded approval by MoEF. The involvement of forest area/stretch along the route of the 400kV Bongaigaon-Siliguri line of ENICL is to be assessed by the petitioner based on their actual route survey."

39. We have considered the submission of the parties on this issue. The clarification issued by the BPC in its letter dated 29.4.2009 reads as under:-

"(d) There are no forest stretches in the route alignment as per the survey report, initiation of process of seeking forest clearances is not required."

The clarification is categorical that no forest stretch is involved in the route as per the survey report and accordingly the initiation of process of seeking forest clearance is not required. It is pertinent to mention that under Clause 1.5 (d) of the RfP, it is the responsibility of the BPC to initiate the process of seeking forest clearance, if required. However, from the explanation of PGCIL as quoted in Para 38 above, it is evident that Bongaigaon sub-station was originally planned on a revenue land which was subsequently found to be located within the forest area. As per the advice of the State Govt., PGCIL has taken steps to divert 35.2 Ha land for the purpose of afforestation which has been approved by Ministry of Environment and Forest. Therefore, the sub-station is located in the revenue land which is located within the Satbhendi Reserved Forest. As a result, the petitioner is required to obtain the

necessary forest clearance for the forest stretch in order to have connectivity with the sub-station. Since the petitioner has not factored in the expenditure for getting forest clearances while submitting its bid, we are of the view that the petitioner needs to be compensated for the expenditure incurred by it on this account.

Change in the Scope of Work?

40. In view of the above discussion, we are of the view that there is a change in the scope of work as the petitioner would be required to construct the transmission lines for more distance than was envisaged on the Survey Report based on which the petitioner has submitted the bid. The distance of both the lines given in the Survey Report was 427 km and the petitioner had also sought and has been granted the transmission licence for 427 km vide our order dated 28.10.2010 in Petition No.131/2010. There is also change in scope of work in so far as the forest clearance is concerned as there was a categorical representation by BPC that there was no forest clearance involved in the route and there is no way that the petitioner can seek interconnection with Bongaigaon sub-station without its line passing through the Satbhendi reserve forest. In our view the additional line length beyond 427 km for which transmission licence has been granted and the expenditure involved in obtaining the forest clearance are expenditure which have emerged after the bidding process is over and are outside the scope of work of the project.

Relief to be granted to the petitioner

41. The next question arises as to what relief can be granted to the petitioner for the additional scope of work. The case of the petitioner has resulted in additional scope of work which can be addressed in two ways. Firstly, bidding can be carried out for the

additional scope of work and based on the outcome, the work can be executed. This is time consuming and will not conform to the time line fixed for operationalisation of the transmission system. The other alternative is to direct the petitioner to execute the additional scope of work and to allow the petitioner the transmission tariff on prorata basis. In our view, the second option is more practicable and is in the interest of the completion of the project.

42. The Commission has the statutory responsibility to balance the interest of the consumers with the need for investment. While the petitioner needs to be compensated for the additional scope of work which has been imposed subsequent to the bidding process, it has to be ensured that the petitioner does not unduly gain by virtue of our decision in this order. The expenditure on the construction of the transmission line has to be optimized in the interest of the consumers. Therefore, we direct that the petitioner shall be entitled to claim the transmission charges on pro rata basis for the expenditure incurred on constructing the transmission lines for the additional scope of work i.e. the difference between the actual length of the transmission lines linking the existing sub-stations of the PGCIL at Bongaigaon, Siliguri, Purnea and Biharshariff and the length of the transmission lines (427 km) for which license has been granted vide our order dated 28.10.2010 in Petition No.131/2010.

43. We direct the Central Electricity Authority to verify and certify the additional scope of work to be undertaken by the petitioner over and above 427 kms for which the transmission licence has been granted and report to the Commission by **10.6.2013**. The petitioner is directed to place all relevant documents before the CEA

and render assistance as may be required. All concerned namely, the LTTCs, CTU and PFC shall render necessary assistance to CEA as may be required. On receipt of the report, the Commission will decide the modalities of reimbursement of the expenditure incurred by the petitioner for the additional scope of work.

44. Pending decision in this petition, the petitioner is directed to undertake construction of the transmission lines including other works for connecting the transmission lines with the identified sub-stations of PGCIL within the time schedule. The petitioner in written submission has submitted for additional time for execution of the additional scope of work. The petitioner may take up the matter first with the LTTC in accordance with the provisions of the TSA and in case of difficulty, the petitioner is at liberty to approach the Commission in accordance with law.

45. We intend to put on record our displeasure at the way the bid process has been handled by PFC as the Bid Process Coordinator. Though it was known that the transmission lines were planned after discussion in the Standing Committee on Transmission and the RPC meetings to connect to the existing sub-stations of PGCIL, the same was not clearly specified in the RfP document. Moreover, the consultant engaged for the survey has indicated coordinates in the survey report which did not tally with that of the coordinates of PGCIL. BPC was under obligation to furnish correct information in the bid documents and the disclaimer relied upon by the BPC cannot absolve it of its basic responsibility. We do not approve of the manner in which the process was handled by the Bid Process Coordinator in this matter and direct that for the projects in future, the Bid Process Coordinator should ensure that the scope of

work indicated in the bid documents is accurate so that the bidders get correct information for deciding their bids before submission.

46. The petition shall be listed for further direction on **18.6.2013**.

sd/-
(V.S. Verma)
Member

sd/-
(S. Jayaraman)
Member

sd/-
(Dr. Pramod Deo)
Chairperson

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Shri M. Deena Dayalan, Member

Petition No. 162/MP/2011

Date of Hearing: 29.1.2013

Date of Order : 08.5.2013

In the matter of

Petition under Section 62 read with Section 63 of the Electricity Act, 2003 for determination of transmission charges for additional scope of work and corresponding amendment of transmission charges approved by the Commission through order dated 28.10.2010 for transmission system being established by petitioner as there is a change/addition in the scope of work of the project.

And

In the matter of

East North Interconnection Company Limited, New Delhi **Petitioner**

Vs

Punjab State Transmission Corporation Limited and Others ... **Respondents**

Following were present:

Miss Meenakshi Arora, Advocate for the petitioner

Miss Ambica Garg, Advocate for the petitioner

Shri T.A.N.Reddy, ENICL

Shri G.V. Sreeraman, ENICL

Shri Mahesh Sharma, ENICL

Shri Pulkit Sharma, ENICL

Shri S. Venkatesh, ENICL

Shri Padamjit Singh, PSPCL

Shri TPS Bawa, PSPCL

Shri R.B. Sharma, Advocate, BRPL

Shri Ramchandra, PGCIL

Shri Pankaj Kumar, PGCIL

Shri R.K.Shahi, PFCCL

Shri Sanjay Rai, PFCCL

ORDER

I have the benefit of going through the order prepared by the Hon'ble Members of the Commission comprising Dr. Pramod Deo, Chairperson, Shri S Jayaraman,

Member and Shri V S Verma, Member. I respectfully disagree with the order of the Hon'ble Members expressed therein and I proceed to record my order on the issues with reference to prayers made by the petitioner i.e. East North Interconnection Company Ltd (ENCIL) in this petition.

2. To recapitulate the brief background of the case, M/s. Sterlite Technology Limited (STL) was selected as the successful bidder based on the international tariff based competitive bidding carried out by Power Finance Corporation in its capacity as the Bid Process Coordinator to establish the following transmission system on 'build, own, operate and maintain' basis and to provide transmission service to the Long Term Transmission Customers of the project:

- (a) Bongaigaon-Siliguri 400 kV Quad D/C transmission line
- (b) Purnea-Biharsharif 400 kV Quad D/C transmission line

After following the prescribed procedures, Letter of Intent (LOI) was issued by the Bid Process Coordinator (BPC) to STL on 7.1.2010. After accomplishing all milestones required in terms of the Request for Proposal (RfP) and Letter of Intent (LOI), STL has acquired the ENCIL as its fully owned subsidiary. ENCIL approached the Commission for adoption of tariff of the transmission system in Petition No.130/2010 and for grant of transmission licence in Petition No. 131/2010. The Commission in its order dated 28.10.2010 in Petition No. 130/2010 has adopted the tariff of the transmission systems and in order dated 28.10.2010 in Petition No.131/2010 has granted licence to ENCIL for inter-State transmission of electricity. For the sake of brevity, I am relying on the arguments of the petitioner, Long term Transmission Customers, CEA, CTU and PFC recorded in the order of the Chairperson and other Members of the Commission.

3. The petitioner has made the following prayers before the Commission:
- (a) Allow this petition for increase of transmission charges with respect to the Transmission Project on account of (i) the change in the geographical co-ordinates viz. "start" and "end" points, (ii) additional expenditure towards forest clearance of 1.84 KM (8.46 Ha forest land),
 - (b) Pass any other order/ directions this Hon'ble Tribunal in the facts and circumstances of the present case may deem as fit and proper.
4. The claim of the petitioner has two components, namely,
- (a) Additional expenditure of ₹24.765 crore/annum for the additional length of 80.35 km to be constructed by the petitioner on account of the difference between the coordinates given in the Survey Report provided by the BPC and the actual coordinates (GPS latitude and longitude) corresponding to the 'start' and 'end' points of four sub-stations of PGCIL;

The petitioner has submitted that it had quoted the tariff for 380 km as per the survey report against which the petitioner is required to construct the total line length of 460.25 km and therefore the tariff quoted by the petitioner should be increased proportionately for 460.25 km. The petitioner has requested for revision of the tariff on proportionate basis for the additional scope of work as per the following equation:

Revised Tariff = Quoted Tariff divided by 380 and multiplied by 460.25

i.e. ₹118.795 crore*459.22/380 = ₹143.561 crore

(b) Additional expenditure of ₹3 Crore on account of expenditure on forest clearance of 1.84 kms (8.46 Ha) of forest land which was not contemplated in the survey report to connect to the Bongaigaon sub-station of PGCIL.

The petitioner has invoked the provisions of Clause 12.2.1 of the TSA under “change in law” situation which covers the increase in cost of acquisition during the period of construction of the project.

5. The case of the petitioner is based on the main premise that the BPC supplied wrong coordinates for the ‘start’ and ‘end’ points of the transmission lines projects in the Survey Report which the petitioner relied upon to quote the financial bid. The petitioner has also submitted that the disclaimers in the bid documents extend to the route of the transmission lines which are between the start and end points and do not cover the start and end points which are the policy decisions of the BPC. As regards the forest clearance, the petitioner has submitted that it was guided by the clear-cut statement by the BPC that no forest stretch was involved in all the three alternate routes of the transmission lines provided in the survey report and hence, no forest clearance requirement was taken into consideration at the time of submitting its financial bid.

6. I have heard the arguments of the learned counsel for the petitioner and the submissions made through affidavits. I have also perused the submissions of the respondents and their pleadings during the hearing. In my view, the claims of the petitioner cannot be sustained on the basis of the facts brought out on record as well as in law. I have supported my view with the analysis made in the succeeding paragraphs.

7. The transmission charges for the transmission lines have been discovered through the international competitive bidding under section 63 of the Electricity Act, 2003 (the Act). Section 63 of the Act provides as under:

" 63. Notwithstanding anything contained in Section 62, the appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."

Government of India, Ministry of Power the Central Government in exercise of powers under section 63 of the Act has notified the "Tariff Based Competitive Bidding Guidelines for Transmission Service" (hereinafter "the Guidelines") vide Government of India, Ministry of Power, Resolution No.11/5/2005-PG(i) dated 17.4.2006. The Government of India has also issued the Standard Bid Documents which are adopted for conducting the competitive bidding. The timeline followed for the bidding in the present case in accordance with the timelines laid down in the Guidelines were as under:

Publication of Global tender	20.10.2008
Intimation of the Commission about initiation of Bid Process	20.10.2008
Date of submission of RfQ documents	5.1.2009
Opening of RfQ document	5.1.2009
Clarification issued by BPC	15.6.2009
Submission of RfP bids	15.9.2009
Opening of RfP bids (non-financial)	15.9.2009
Opening of RfP bids (financial)	9.10.2009
Meeting of Bid Evaluation Committee	9.10.2009
Issue of LOI	7.1.2010
Acquisition of SPV	31.3.2010

8. The transmission lines were to be established on 'build, own, operate and maintain' basis and provide services to Long Term Transmission Customers. Bid Evaluation Committee consisted of representative of State Bank of India (SBI)/MD,

SBICAPS, Member (Trans) BSEB, MD, Assam Electricity Grid Co. Ltd., CE/SO & Comml, HVPNL, Chief Engineer (SETD) CEA, Chief Engineer (F&CA) CEA, Director (Trans) UPPCL, and CEO of the SPV. Bid Evaluation was taken up by the Bid Process Management Consultant, M/s.**Price Waterhouse Cooper Pvt. Ltd.**, and Review Consultant, M/s.**SREI Infrastructure Finance Ltd.**, and the result was presented to the Evaluation Committee recommending 8 out of the 16 bidders as qualified at RfQ stage. RfP documents were purchased by 3 bidders. Non-financial bid was opened on 15.9.2009 in the presence of Bid Evaluation Committee and the representatives of the bidders. The Bid Process Management Consultant carried out the check of the non-financial bids in accordance with the conditions of RfP which was reviewed by the Bid Review Consultant and **all the bids were recommended as responsive for opening of financial bids. The RfP (financial bids) were opened on 9.10.2009 in the presence of Bid Evaluation Committee and the representatives of the bidders. This process is very important because the bids have been found responsive as per terms and conditions of RfQ.** The petitioner did not raise any of the issues before the Bid Evaluation Committee that are now being agitated before us in the present petition.

9. The Bid Process Management Consultant, the Bid Review Consultant, Bid Evaluation Committee, Bid Process Co-ordinator, CEA and CTU who were all involved in the whole process did not have any doubt about the project. Bid Evaluation was done by the Committee as per procedure prescribed in the RfP. The bidders are to abide by the clauses of different sections of RfP namely, Disclaimer, Information and Instruction to Bidders etc. As per provisions of clause 3.4 of RfP for the selection of transmission service provider, the selected bidder shall accept the LOI unconditionally

which was followed in this case. The understanding of the Transmission project was very crystal clear with the names of Sub-Stations vividly and clearly marked and understood by all including the petitioner which were as below:-

***Bongaigaon – Siliguri 400kV Quad D/C Transmission line [217.417 KM];
Purnea – Biharshariff 400kV Quad D/C Transmission line [209.893 KM];***

10. The LOI was issued after all the process on 7.1.2010 to M/s. Sterlite Technology Limited (STL) for having quoted the lowest levelised transmission charge. The levelised tariff proposals submitted by the other qualifying bidders including Sterlite as evaluated by the consultants may be seen as below:

S. NO.	BIDDER	LEVELISED TRANSMISSION CHARGE (MILLION RUPEES/ANNUM)	RANKING
1.	Sterlite Technologies Ltd	1187.95	L1
2.	Lanco Deepak Consortium	1676.92	L2
3.	Reliance Power Transmission Ltd.	2400.04	L3

11. After unconditional acceptance of the LOI, the petitioner ENCIL filed a petition on 15.4.2010 under Section 63 of the Electricity Act, 2003 before this Commission for adoption of tariff of the following elements after consciously choosing the best alternative routes suggested by the consultant appointed by BPC in its survey reports:

- (a) Bongaigaon – Siliguri 400 kV transmission line – 217.417 Kms
- (B) Purnea-Biharsharif 400 kV transmission line – 209.893 kms.

12. The petitioner has made the following prayers before the Commission:

- (a) Allow the application and adopt the transmission charges to be paid by the long term transmission customers to ENCIL with respect to the transmission project

- (b) Approve the modification in the Non-escalable transmission charges as prayed for in para 12 of the application and direct the LTTCs to pay the same to the applicant.
- (c) Pass such orders as the Commission may deem fit and proper in facts and circumstances of the case.

13. The Commission while adopting the tariff in their order dated 28.10.2010 has very clearly stated as follows (vide para 21):

“In the light of the discussions in the preceding paragraphs, we are satisfied that the selection of the successful bidder and the process of arriving competitive bidding tariff of the transmission system mentioned in para 1 has been carried out by the bid process coordinator through a transparent process in accordance with the guidelines and standard bid documents. Accordingly, we approve and adopt the transmission charges of the transmission system arrived through the process of competitive bidding to be charged by the applicant company from the LTTCs.”

This is the crucial aspect of the decision of the Commission. The Commission while adopting the tariff on 28.10.2010, was very clear that all due process has been completed diligently and transparently and the details of the transmission system for which the tariff was approved was exactly the same as requested by the petitioner which is reproduced below:-

**Bongaigaon – Siliguri 400kV Quad D/C Transmission line [217.417 KM];
Purnea – Biharshariff 400kV Quad D/C Transmission line [209.893 KM];**

The commission did not check the GPS co-ordinates as per survey report or had there been any submission from the CTU/BPC/CEA and the petitioner himself about the new sub-stations that have to come up or the existence of any forest area for which the petitioner has to take clearance as contrary to the details in the survey report.

14. It may be seen from the table at para 7 that the gap between the opening of RfQ documents and submission of the RfP document by the bidders was about 250 days. This long gap has been given to the bidders to make proper survey of the route and other aspect of the transmission systems proposed to be awarded.

15. Further clause 1.3.2 of the RfQ provided for the scope of work of the project as under:

“1.3.2 The specific scope of work under “Transmission Scheme for enabling import of NER/ER surplus power by NR” is as follows:

- Bongaigaon-Siliguri 400 kV quad D/C
- Purnea-Biharsharif 400 kV quad D/C "

16. Clause 1.4 of the RfQ provided that a Grid Map indicating the location of the Project was enclosed for the information and reference of the bidders. The Grid Map shows that the proposed transmission lines were to connect the existing sub-stations of PGCIL in the locations of Purnea, Biharsharif, Bongaigaon and Siliguri. The bidders were given complete information about the route of the transmission lines including the locations of the sub-stations to which they would be connected to enable them to make informed decisions while quoting the bid price for the project.

17. Clause 1.5.1.1 of the RfQ provides for the scope of work of the Transmission Service Provider to be selected on the basis of the competitive bidding as under:

“Establishment, operation and maintenance of the Project on build, own, operate and maintain basis and completion of all the activities for the Project, including survey, detailed project report formulation, arranging finance, project management, necessary consents, Clearances and Permits (way leave, environment & forest, civil aviation, railway/road/river/canal/power crossing/PTCC, etc.).....”

Thus from the very beginning of the bidding process with the issue of the RfQ document, the bidders have been made aware that the successful bidder who would be required to carry out the work as Transmission Service Provider (TSP) is responsible for survey, detailed project report formulation, arranging consents and clearances for the project.

18. As per the bid process, the bidders qualified at the RfQ stage are issued with the RfP documents to enable them to submit the non-financial and financial bids for the project. The RfP document contained the following disclaimer:

“1.The Request for Proposal (RfP) document is not an agreement or offer by the bid process coordinator to the prospective bidders or any party. The purpose of this RfP is to provide the interested parties with the information to assist the formulation of the bid. The RfP is based on materials and information available in the public domain.

2. *****

3. While this RfP has been prepared in good faith, neither the BPC nor its employees or advisors /consultant make any representation, or warranty, express or implied as to the accuracy, reliability or completeness of information contained in this RfP. The bidders shall satisfy themselves, on receipt of the RfP document, that the RfP document is complete in all respects. Intimation of any discrepancy shall be given to this office immediately. If no intimation is received from any bidder within 10 days from the date of issue of RfP document, it shall be considered that the issued document, complete in all respects has been received by the bidder

4. Neither BPC, its employees nor its consultants will have any liability to any bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RfP, any matter deemed to form part of this RfP, the award of the project, the information supplied by or on behalf of BPC or its employees, any advisors, consultants or otherwise arising in any way from the selection process for the said project.

5. *****

6. *****”

After issue of the RfP documents, the BPC is required to provide a Survey Report to the bidders as per Clause 1.5 of the RfP which provides as under:

“1.5 The BPC has initiated development of the Project and shall be responsible for the tasks in this regard as specified here under:

(a) Provide to the bidders a Survey Report for the project at least ninety days (90 days) prior to the bid deadline. The Survey Report will contain information regarding the transmission line, i.e. voltage level, line configuration (i.e. S/C or D/C), indicative route alignment, conductor type, conductor configuration and type of terrain likely to be encountered.

Provided that neither the BPC, its authorized representative, any of the Long Term Transmission Customer(s), nor their directors, employees or advisors/consultants make any representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions made in the Survey Report, or the accuracy, completeness or reliability of information contained therein, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of such Survey Report, even if any loss or damage is caused to the Bidders by any act or omission on their part.”

RfP defines the ‘Survey Report’ to mean “the report containing initial information regarding the Project and other details provided as per the provisions of clause 1.5 (a) of this RfP”. Thus the Survey report to be supplied to the bidders is for the purpose of initial information regarding the project including the information regarding the transmission lines and the type of terrain likely to be encountered. Clause 1.5 also contains a strong and unambiguous disclaimer “that neither BPC, its authorized representative, any of the Long Term Transmission Customer(s), nor their Directors,

employees or advisors/consultants make any representation or warranty express or implied, or accept any responsibility or liability, whatsoever in respect of any statements or omissions made in the Survey Report, or the accuracy, completeness or reliability of information contained therein, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability of completeness of such survey report, even if the loss or damage is caused to the bidders by any act or omission on their part ". Thus it is the responsibility of the bidders to take their informed decisions based on the actual survey of the proposed transmission lines and the terrain through which it has to pass and accordingly quote the cost in the bids. BPC issued the Survey Report to the bidders in its letter dated 22.4.2009. Relevant extract of the survey Report is extracted as under:

"(a) The survey report for the project is enclosed herewith. It is to mention that neither the BPC, its authorized representative, any of the long term transmission customers, nor their directors, employees or advisors/consultants make any representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions made in the survey report, or the accuracy, completeness or reliability of information contained therein, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of such Survey Report, even if any loss or damage is caused to the Bidder by any act or omission on their part."

In the light of the categorical statement in the above letter that neither the BPC nor the LTTCs make any representation or warranty, express or implied, in respect of any statement or omission made in the Survey Report, the bidders should not rely on the information furnished in the Survey Report without itself verifying the facts or conducting its own survey before quoting the financial bids.

19. In order to clarify the queries of the bidders, the RfP document provides for pre-bid meetings. Relevant clauses of the RfP are extracted as under:

“2.12.1 The bidders may seek clarifications or suggest amendments to the RfP in writing, through a letter or by fax (and also soft copy by e-mail) to reach the BPC at the address indicated in Clause 2.23 within the date and time mentioned in Clause 2.16.2. For any such clarifications or amendments the Bidders should adhere to the format as per Annexure-7.”

2.12.2 ***

“2.12.3 The purpose of the pre-bid meeting will be to clarify any issues regarding the RfP, including in particular, issues raised in writing by the Bidders as per the provisions of Clause 2.12.1.”

“2.12.6 In case Bidders need any further clarifications not involving any amendments in respect of final RfP, they should ensure that written request for such clarification is delivered to the BPC at least fifteen (15) days prior to the Bid Deadline as mentioned in Clause 2.16.1. The BPC may issue clarifications only, as per its sole discretion, which is considered reasonable by it. Any such clarification issued shall be sent to all the Bidders to whom the RfP has been issued. Clarifications sought after this date shall not be considered in any manner and shall be deemed not to have been received. There shall be not extension in Bid Deadline on account of clarifications sought as per this clause 2.12.6.”

Thus the RfP provides full opportunity to the bidders to make any query in writing to the BPC by a particular date. In the pre-bid meeting, the BPC is under obligations to clarify any query received from the bidders in writing as well as raised during the meeting. The purpose is to ensure that there is no information asymmetry which hampers the informed decision by the bidders while quoting the bids and to give finality to the charges quoted in the bid.

20. Clause 2.14.2 of the RfP provides that the bidders shall inform themselves fully about the following before quoting the bids:

“2.14.2.1 The Bidders shall make independent enquiry and satisfy themselves with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on his Bid. **Once the Bidders have submitted their Bids, the Bidders shall be deemed to have inspected and examined the site conditions** (including but not limited to its

surroundings, its geological condition and the adequacy of transport facilities to the site), the laws and regulations in force in India, the transportation facilities available in India, the grid conditions, the adequacy and conditions of roads, bridges, railway sidings, ports, etc. for unloading and/or transporting heavy pieces of material and has based its design, equipment size and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the transmission of power. Accordingly, each Bidder acknowledges that, on being selected as Successful Bidder and on acquisition of one hundred percent (100%) of the equity shares of the East-North Interconnection Company Ltd., **the TSP shall not be relieved from any of its obligations under the RfP Project Documents nor shall the TSP be entitled to any extension in Scheduled COD mentioned in this RfP or financial compensation for any reason whatsoever.**”

“2.14.2.3 Bidders may visit the route of the Transmission Lines associated with the Project and the surrounding areas and obtain/verify all information which they deem fit and necessary for the preparation of their Bid.

2.14.2.4 The BPC has carried out a survey of the Transmission Lines associated with the Project and shall provide each Bidder with its Survey Report of the Project. Bidders in their own interest should carry out required surveys and field investigation for submission of their Bid.

2.14.2.5 Failure to investigate the route of the Transmission Lines associated with the Project and to examine, inspect site or subsurface conditions fully shall not be grounds for a Bidder to alter its Bid after the Bid Deadline nor shall it relieve a Bidder from any responsibility for appropriately eliminating the difficulty or costs of successfully completing the Project.

2.14.2.6 The Selected Bidder shall obtain all necessary Consents, Clearances and Permits as required. The Bidders shall familiarize itself with the procedures and time frame required to obtain such Consents, Clearances and Permits. ” (Emphasis supplied)

21. The above provisions in the RfP makes it mandatory for the bidders to make detailed survey of the transmission lines and the surrounding conditions before quoting the bids. It may be seen from the table at para 7 that between the opening of RfQ and submission of RfP, about 250 days time was available to the petitioner to make the actual survey of the transmission line routes and make the bid accordingly. PSPCL in its affidavit dated 15.10.2012 has submitted as under:

“8.1 Since the scope of work included survey, detailed project report formulation, it is incumbent on the petitioner to have carried out these activities and made an assessment before submitting the bid. Had the survey been carried out, the petitioner would not have made the mistake of relying upon the paper statistics (coordinates) while the actual positions were existing on the ground.”

I entirely agree with the opinion of PSPCL.

22. The petitioner in his submission has stated that during independent survey conducted by the petitioner, it realised that the GPS coordinates on summary sheets were different from the GPS coordinates provided in the detailed data sheet. The petitioner has further submitted that upon further verification it realised that the coordinates given in the statement summary were completely incorrect. The submission of the petitioner is extracted as under:

“5. (h) It is relevant to note that the survey report provided two kinds of data relating to connecting ends of the transmission lines i.e. GPS coordinates of start and end points on summary sheets and a detailed data sheet of the transmission lines. During the independent survey conducted by the petitioner, it realized that the GPS coordinates on summary sheets (as claimed to be start and end points) were different from the GPS coordinates provided in the detailed data sheet.

Upon further verification the Petitioner realized that the coordinates given in statement summary were completely incorrect. The geographical coordinates of the ‘start’ and ‘end’ in the statement summary of Survey Report are reproduced herein:-

“(i) Bongaigaon-Siliguri 400 kV Quad D/C line

start point - Bongaigaon in Assam (Longitude 90.3794 E and Latitude 26.4574N) and

End point - Siliguri in West Bengal (Longitude 88.7485E and Latitude 26.5638 N)

It is to be noted that the actual end point is in Binaguri 400 kV s/s, Binaguri, Jalpaiguri (D) instead of Siliguri.

“(ii) Purnea-Biharshariff 400 kV Quad D/C line

start point - Purnea in Bihar (Longitude 85.5323 E and Latitude 25.166N) and

It is to be noted that the actual start point is Maranga instead of Purnea.

End point - Biharshariff in Bihar (Longitude 86.9993 E and Latitude 25.6845N).

In view of the above, the petitioner was constrained to rely on the “start” and “end” points/gantry/angle points given in the detailed data sheet of the survey report, and accordingly prepared and submitted its financial bid relying on data with respect to start and end points provided in the survey report”.

23. According to the above affirmation, it can be construed without any iota of doubt that the petitioner was fully aware of the discrepancies about the coordinates of the ‘start’ and ‘end’ points of the sub-stations where the transmission lines would connect before submitting the bid.

It is also clear from the above submission of the petitioner that it made an independent survey of the route of the transmission line and found discrepancies between the coordinates given in summary sheets and in the detailed data sheets given alongwith the Survey Report. Despite the discrepancies noticed, it did not care to verify the transmission lines routes on ground, particularly when the disclaimer on the Survey Report required the bidders to make physical survey and make an informed decision before quoting the bid. The petitioner has admittedly relied upon the end and start points given in the detailed data sheet of the Survey Report and the reason for doing so has not been explained. In my considered view, there is no rational basis for the petitioner to rely on the coordinates given in the detailed data sheet for the purpose of quoting the bids.

24. The petitioner’s explanation of relying upon the coordinates given in the detailed data sheet can be gathered from the submission in the petition as noted below:-

“8. It is submitted that as per the RfP, it was the petitioner’s obligation to finally select the route of transmission lines and to conduct its own independent survey and it is precluded from raising any claim over the unsuitability of the site or transmission line route between the ‘start’ and ‘end’ points. However, it is

relevant to note that it was not the responsibility or obligation of the petitioner to provide the 'start' and 'end' points of the transmission lines.

Petitioner in fact conducted its own geo-technical investigation of the line route, but such investigation was only with respect to the route not related to 'start' and 'end' points provided in the Survey Report. The information provided in the bid documents comprising of any communication, survey reports etc. with respect to the 'start' and 'end' points had to be treated as sacrosanct and therefore STL completely relied upon the coordinates provided in details in the data sheets of the Survey Report.....”.

25. From the above submissions, it is apparent that the petitioner has carried out its own geo-technical investigation of the line route based on its own assumption that the routes do not include 'start' and 'end' points and therefore it was not under any obligation to verify the 'start' and 'end' points. I am unable to accept the argument of the petitioner as the geo-technical investigation of the line routes would necessarily start from the 'start' point and end at the 'end' point.

26. Another crucial point which needs to be noted is that when the petitioner during the survey found that there is no sub-stations on the coordinates given either in the summary sheet or in the detailed data sheets, it is natural for the bidders to enquire about the exact locations of the sub-stations to which the lines are to be inter-connected. As already noted, the bidder can seek clarification in writing or during the pre-bid conference. The petitioner has done none of these. The petitioner was at liberty to make query before the BPC that no sub-station was existing at the coordinates given in the summary sheets as well as detailed data sheets supplied alongwith the Survey Report and to seek clarification about the exact coordinates of the sub-stations for the inter-connection of the transmission lines. This could have laid to rest all uncertainty about the exact locations of the sub-stations. It is noticed that

some other bidder had made a query regarding the inter-connection points during the pre-bid meeting. The query and reply thereto are extracted as under:

Ser	Document	Provision in the RfP	Query	Clarification by BPC
5.	RfP	Clause 1.2	<p>Please provide the details of the inter-connection points for the transmission lines?</p> <p>The details should be provided by the BPC at least 30 days prior to the Bid Deadline.</p> <p>Designing of the transmission system depends on the technology used at the origin and termination points.</p>	<p>The start and end points will be the sub-stations of PGCIL at the respective locations and the obligation of arranging the inter-connection points shall be as per the provisions of Article 4.2.1 of the TSA.</p>

The clarification to the above query set at rest that the ‘start’ and ‘end’ points of the transmission lines are the sub-stations of PGCIL at the respective locations. The sub-stations referred to in the clarification are the existing sub-stations of PGCIL; otherwise the BPC would have clarified that “the start and end points would be the new sub-stations or sub-stations to be constructed by PGCIL”. Since the petitioner claims that it had carried out geo-technical investigations of the line route and did not find the sub-stations at the coordinates given in the survey report, it was expected of the petitioner to get the point clarified from the BPC as to whether any new sub-stations of PGCIL are being constructed at the coordinates given in the Survey Report. It is to be noted that the petitioner or for that matter any bidder was not precluded from making any query during the pre-bid meeting. The learned counsel for the petitioner has argued that conditional bids are not acceptable and therefore, it could not make the bids with the condition that the financial bids are confined to the transmission lines between the given coordinates. There was no requirement for conditional bids as the

bidders are given opportunity at the pre-bid stage to seek any clarification pertaining to the project and quote the bids accordingly. Moreover, in none of the bidding documents, it has been represented that in future, sub-stations will come up at the given coordinates in the Survey Report. The 'start' and 'end' points are the existing sub-stations which have clearly been depicted in the map which was provided to the bidders at the RfQ Stage.

27. The petitioner has in para 12 of the petition has made the following submissions:

“.....It is submitted that all along, the petitioner was being given to understand that a new substation will be constructed close to 'start' and 'end' locations indicated in the detailed survey report for Purnea-Siliguri ends of the transmission lines. Now the petitioner is being instructed to terminate the transmission lines at the existing sub-station of respondent No. 2 at far off villages, therefore, the petitioner will have to incur additional cost which was not the part of the original bid and the same cannot be made attributable to the petitioner.”

I have carefully considered the above statement and reject the contention of the petitioner that either BPC or any other authority has given such an understanding. In fact, the bidders were clarified very categorically in the pre-bid meeting that the termination points are the existing sub-stations which were named clearly in the tender document. As stated earlier, the bid documents contained the map of the transmission lines connections and it indicated without any doubt what so ever that the lines to be built would terminate at the existing sub-stations only.

28. Even for a moment, it is presumed that the petitioner was given to understand that new sub-stations would come at 'start' and 'end' points, it would need to be constructed by CTU. The CTU should have clearly come out with the plan of action for construction of new sub-stations. The CEA as planning and co-ordinating authority of the transmission lines has never stated that there was any plan to construct new sub-

stations at the start and end points as per the co-ordinates wrongly provided in the survey report. CEA vide letter dated 27.3.2012 has stated as under:

“The 400 kV Bongaon-Siliguri and Purnea-Biharshariff lines of ENICL were planned in coordination with the constituents of ER, NR, NER and POWERGRID at various standing committee meetings of the respective regions for inter-connection with the existing 400 kV Bongaigaon, Siliguri, Purnea, Biharshariff sub-stations of Powergrid and not with any new sub-stations at the end/start coordinates given in the survey report”.

If we believe that the petitioner had in its mind that new stations would come up, the timelines should have been discussed in the co-ordination meetings at the time of planning the project before sending the proposal to the Bid Process co-ordinator. There is no such project report produced before us to show that the PGCIL (CTU) had such a proposal. Moreover, a private transmission developer who has won the bid and entered into TSA has to really coordinate the activities as to when the new sub-stations would come up so that he can plan and coordinate the construction activities so that the petitioner do not incur expenditure on idle capital and consequent expenditure on interest, without earning any revenue in the form of tariff on the line that has been constructed. I am unable to comprehend that such an assumption could be made by the bidder that new sub-stations would come up at the ‘start’ and ‘end’ points and go in for the bid. Therefore, I am of the view that the prayer of the petitioner should be rejected outrightly and his whole contention that it has submitted its bid with coordinates provided in the survey report and as a result, they have to construct extra line length to give connectivity to the existing substations of PGCIL also needs to be rejected. As the tender document was clear in mentioning the names of the stations very clearly, it was the bounden duty of the petitioner to verify before submission of the bid. The extra cost as per the contention of the petitioner cannot be loaded to the cost burden of the long term transmission consumers.

29. Haryana Utilities have made some pertinent submission about the claims of the petitioner for the additional line length which is extracted as under:

“f) After the award of the contract, the first activity to be undertaken is the survey and determination of the line route and finalisation of the exact tower locations, viz. location of the suspension towers, angle towers and dead end towers etc. and the rail/road/river crossings. In the initial exercise itself, the actual line length would be discussed/determined. It is evident that at the very beginning of the execution of the project, the actual line length was known to the petitioner but the issue of increased claim of the line length was not raised at that stage and the petitioner went ahead with construction of the line, knowing from the very beginning that the actual line length was more. The implication is that by taking up the construction and award of orders for towers, conductor etc., the petitioner secured the contract by bringing it to an irreversible stage. This implies that had the issue of increased line length been raised at the very beginning before the start of construction or before the placement of order for tower material and conductor etc., it is possible that the tender itself may have been reopened with re-bidding. The petitioner went ahead with construction of the lines and raised the issue of increased line length at a much later stage when it was not possible to go for re-bidding. Thus by bidding for a lower line length, the petitioner secured the contract by quoting lower rates and now at this stage for the purpose of tariff, the petitioner is raising the claims for higher tariff. This procedure shows that the petitioner knowingly went ahead with the construction knowing fully well that the line length was 21% higher than his estimate on which the bid was claimed to be made.

g) The possibility cannot be ruled out that the other bidders may have exercised due care, caution and diligence to determine the exact line length and submitted their bids on the basis of the correct line length and on this account their bid rates would have been on the higher side as compared to the petitioner who submitted his bid on the artificially low and assumed line length which was 21% lower, was declared the lowest and the project was awarded to the lowest bid.”

30. Without knowing the exact start and end points planning the procurement of material for construction would be difficult and without conducting the actual walk-in survey of the entire route as per the selected alternative from the survey report, would also not provide the length of transmission line. This has resulted in under estimating the line length by the bidder. I would not rule out the possibility of the petitioner factoring in the lower line length in order to keep the bid price low and to capture the project being the lowest bidder. After the project was awarded, PGCIL provided the details of the sub-stations for inter-connection vide its letters dated 23.6.2010, 3.8.2010 and 22.2.2011 and based on the alleged discrepancies between the coordinates of the PGCIL sub-stations and the coordinates given in the Survey Report,

the petitioner wrote a letter dated 9.3.2011 to the Deputy Chief Engineer (ISB), Punjab State Power Corporation Ltd. 220 kV sub-station Ablowal, Punjab with copy endorsed to CEA. In its letter No. 164/ER/2011/Sterlite/394-401 dated 28.4.2011 (Annexure P-14 to the petition), CEA has written to PSPCL with copy to the petitioner as under:

“We are in receipt of necessary information from PGCIL and this is to inform that the GPS coordinates mentioned at page 2 of the letter under reference are in order. It is clarified that the transmission lines on ENCIL have to be terminated at the respective gantries of PGCIL sub-stations as mentioned above. If there is any change in the transmission line length and cost due to the actual location of PGCIL sub-station, then the same should be dealt with as per the contract transmission service agreement”.

CEA has simply acknowledged the position that the transmission lines of the project have to be terminated at the respective gantries of the existing PGCIL sub-stations. They have not gone into the reason for the additional line length which was due to the mistake committed by the bidder. The comment of the CEA as regards additional length should have been made only after consulting the LTTCs. It is pertinent to mention that the petitioner claims to have first come to know about the discrepancy after it received the letter dated 23.6.2010 from PGCIL. At that point of time its application for adoption of tariff and for grant of transmission licence were pending with the commission which were disposed off on 28.10.2010.

31. Timelines of the adoption of tariff by the Commission were as below:

Filing of application for adoption of tariff	15.4.2010
Notice issued for hearing	30.4.2009
Hearing held	18.5.2010
ROP issued	21.5.2010
Hearing Held	8.7.2010
Interim Order issued	4.8.2010
Reply filed by Petitioner/BPC	12.8.2010
Final order issued	28.10.2010

32. It is surprising that the issues relating to coordinates of ‘start’ and ‘end’ points have not been brought to the notice of the Commission while its petition for adoption

of the tariff was being considered. Had the petitioner raised the issue of change in line length at that point of time the Commission could have taken an appropriate decision before granting the transmission licence and adoption of Tariff. The petitioner by not raising the issue at that point of time has missed the opportunity to rectify the mistake/discrepancy if any in the line length of the transmission lines.

33. The bid provisions and the PPA conditions are very clear and the conditions explicitly discourage successful bidders from raising issues after signing the PPA without performing their due diligence at the time of bidding. The bidder has won the bid by quoting a certain amount of transmission charges which cannot be negated by the commission giving undue advantage for the mistake knowingly committed by the bidder. I feel that the very purpose of competitive bidding under Section 63 of the Electricity Act, 2003 would be lost if relief is given to such aggressive bidders and the interest of the long term transmission customers would be jeopardised. This will also put the other bidders who had with full knowledge and understanding submitted their bids in a disadvantageous position. In this particular case all the long term transmission customers have categorically declined to accept the contention of the petitioner claiming additional line length and resultant additional capital cost invoking change in law under article 12 of TSA.

34. As per TSA, “change in law” is defined as under:

“12.1 Change in law

12.1.1 Change in law means the occurrence of any of the following after the date, which is seven (7) days prior to the bid deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP.

- The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any law, including rules and regulations framed pursuant to such law;

- A change in the interpretation or application of any law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- A change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits'
- Any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP;
- Any change in the Acquisition Price; or
- Any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.

12.1.2 Notwithstanding anything contained in this Agreement, Change in Law shall not cover any change:

- a. on account of regulatory measures by the Appropriate Commission including calculation of Availability; and
- b. in any tax applied on the income or profits of the TSP.

12.2. Relief for Change in Law

12.2.1 During Construction period:

During the Construction period, the Impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:

For every cumulative increase/decrease of each Rupees Four Crores (₹4,00,00,000) in the cost of the Project up to the Scheduled COD of the project, the increase/decrease in non-escalable Transmission charges shall be an amount equal to 0.32 percent (0.32%) of the non-escalable Transmission Charges”

By any stretch of imagination, it cannot be construed that the conspicuous failure of the bidder in not conducting the proper survey as expected would tantamount to change in law.

35. For the reasons discussed above, I am not inclined to agree that the petitioner needs to be compensated in any manner for the additional line length of the transmission lines. The petitioner has taken a business risk by not factoring the actual line length of the transmission lines between the sub-stations of PGCIL and the petitioner does not deserve any relief for its decision.

36. Another prayer of the petitioner is the compensation for the expenditure it is required to incur on the forest clearance to lay the transmission line to connect to the Bongaigaon sub-station of PGCIL. The petitioner has contended that the BPC in its clarification dated 29.4.2009 has stated that there are no forest stretches in the route whereas the Bongaigaon sub-station of PGCIL is located in the centre of Satbandh Reserved Forest. The petitioner has claimed that it is forced to incur capital expenditure of ₹2 crore towards payment of afforestation cost apart from being subjected to lengthy procedure and delay involved in obtaining all clearances for construction of transmission line in the reserved forests. BPC has not commented anything on this issue. PGCIL in its affidavit dated 29.3.2012 has submitted as under:-

"The land identified for construction of Bongaigaon sub-station by the State Authorities was a revenue land. The cost of land fixed by revenue authority was paid to State Govt. and the land was transferred by the State Govt. to POWERGRID (then NEEPCO). However, later DFO informed that the transferred land falls in forest area. Accordingly, a proposal was prepared for diversion of 35.2 Ha land as recommended by State Govt. which was accorded approval by MoEF. The involvement of forest area/stretch along the route of the 400kV Bongaigaon-Siliguri line of ENICL is to be assessed by the petitioner based on their actual route survey."

On a further query from the Commission on this subject, PGCIL has in its letter dated May 6, 2013 has stated as below:

"The Bongaigaon substation where Bongaigaon-Siliguri transmission line is to be terminated is located within the Satbhendi Reserve Forest diverted for non-forest use. The extent of forest involvement can be accessed only by surveying/constructing agency duly certified by State Forest Authorities. In this instant case, the line is being constructed by M/s. East-North Inter Connection Company Limited and the exact assessment can be made by them"

37. This fact that PGCIL sub-station in Bongaigaon is surrounded by Sathbhendi Reserve Forest on all sides should have been known to the Bid Process Coordinator who had floated the tender after getting the survey report prepared by the accredited

agency. However, BPC has categorically stated in its letter No. 03:14:ITP:07-ENICL-RfQ dated April 22, 2009 (annexure P-3 to the Petition) as under:

“In line with the requirement of clause 1.5 of the RfP, the following details are furnished for your information and further action please:

(a) the survey report for the project is enclosed herewith. It is to mention that neither the BPC, its authorised representative, any of the long term transmission customer(s), nor their directors, employees or advisors/consultants make any representation or warranty, express or implied or accept any responsibility or liability, whatsoever, in respect of any statements or omissions made in the survey report, or the accuracy, the completeness or reliability of information contained therein, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of such survey reports, even if any loss or damage is caused to the bidder by any act or omission on their part.

(b) XXXXXXXXXXXX

(c) As there are no sub-stations, switching stations or HVDC terminal or inverter stations in the subject transmission scheme, the initiation of land acquisition is not required.

(d) There are no forest stretches in the route alignment as per the survey report; initiation of process of seeking forest clearance is not required.

(e) XXXXXXXXXXXXXXXXXXXXXXXX”

38. It is however noticed that in the final route alignment report based on topo sheets satellite image for Bongaigaon-Siliguri 400 kV Quad D/C line, technical profile indicating the B-line length of 210.5kms at page 6 of the survey report has mentioned as under:

“FOREST

The entire corridor has forest lands intermittently and they are located across the entire corridor but the alternative routes have been plotted in such a way to avoid forest completely”.

Also, under the comparative statement for alternative routes (page 7 of the survey report) in the row “forest area” it has been mentioned “NIL” in all the three alternatives.

The conclusion of the survey as mentioned in page 9 of the Survey Report is reproduced as under:

“RESULTS & CONCLUSION

All the routes are

After detailed analysis, it is observed that the alternative 1 has the least route length and has minimum crossings in terms of rail, road and existing power lines. Alternative one is also the best in terms of approachability for construction as well as maintenance.

So the walkover survey/GPS survey was conducted over the route alignment marked as 1. The details like angle points, river crossings, road crossings, railway crossings, power line crossings of the route are enclosed herewith in Annexure.....”

39. It is seen that though the entire route has intermittent forest stretch, the Survey Report has concluded that the alternative routes are plotted in such a way to avoid forest completely. Based on this report, the BPC has stated that no forest stretch was involved. However, the statement of BPC needs to be read alongwith its disclaimer that neither the BPC nor the LTTCs are responsible for the accuracy or reliability of the Survey Report. Consequently, it was the responsibility of the bidder to verify that the ‘start’ and ‘end’ points of the transmission lines where the sub-stations existed. Had this due diligence been completed before submission of the bid, the petitioner would have come to know about the existence or otherwise of forest area near the Bongaigaon sub-station.

40. Therefore, my conclusion is that there was no forest area as per the Survey Report and the petitioner at its own risk has submitted the bid. We may not be able to agree for any expenditure to be incurred on forest clearance etc which amounts to additional work. And if the petitioner has chosen a route apart from the three routes indicated in the survey report which has forest area, it was his conscious decision and he has also not brought this to the notice of the Bid Evaluation Committee/ Bid Process co-ordinator at any point of time, for which action we cannot agree for any additional cost to be passed on to the consumers.

41 Before I finally record my consolidated views, I would like to quote the relevant submissions made by the respondents and the long-term transmission consumers wherein they have categorically refused to accept the plea of the petitioner for according additional capital expenditure for the work arising due to the petitioner's own mistake.

Views of CEA dated 27.3.2012

"The 400 kV Bongaigaon –Siliguri and Purnea-Biharshariff lines of ENICL were planned in coordination with the constituents of ER, NR, NER and POWERGRID at various Standing Committee meetings of the respective regions for interconnection with the exiting 400 kV Bongaigaon, Siliguri, Purnea, Biharshariff sub-stations of POWERGRID and not with any new substations at the end/start coordinates given in the Survey report of BPC".

Views of PFC dated 28.3.2012

"E) It is mentioned that in the RfQ and RfP documents issued to the bidders, a grid map was attached which shows that the terminal sub-stations are the existing sub-stations of PGCIL. A copy of the grid map as provided in RfQ and RfP documents is enclosed as Annexure-III".

Views of PSPCL dated 15.10.2012

"The petitioner has raised the issue of incorrect coordinates of the starting/ending points in the data. However, since the sub-stations which were the start and end points of the line were existing stations more than 5 years old, the starting/ending points were clearly identified and known".

Objections of BRPL, Delhi dated 10.12.2012

"d) the Petitioner has wrongly invoked the jurisdiction of the Commission knowing that under Section 63, the role of the Commission is limited. This is not a case under cost plus determination of tariff. Hence, the petition is not maintainable under law

e). The claim of petitioner for change in law under clause 12.2.1 of TSA is not correct since an issue relating to length of the line is not justified to be covered under the change of law. Petitioner has not provided any notification of change of law."

Objections of Rajasthan DISCOMS dated 10.12.2012

"e) The Commission has adopted the competitively bid tariff derived under Section 63 through its order dated 28.10.2010. Section 62 is therefore, not applicable.

f) There is no provision in the RfP or under the bidding documents of section 63 to increase the tariff on pro rata basis with a claimed increase in line length. As per principle of economy of scale also the pro rata methodology is not justified or tenable.....

n) As per clause 5.3 page 231 of TSA monthly progress reports were required to be sent which has not been done. Petitioner thus failed to discharge its obligation. Had the monthly reports been sent the present issue of line length might have been resolved at the beginning itself.

o) There is no fault on the part of beneficiaries and so there is no justification for loading extra tariff as claimed.”

After detailed analysis and application of mind, I tend to agree with the respondents, CTU, PTC, and CEA.

The above submissions have been made carefully and the petitioner has no clear answer. I fully agree with the statements made by them.

42. In view of the above discussion, I have come to the following unfettered conclusions:

(a) That the petitioner has submitted its bid fully accepting the conditions of RfQ and RfP and has failed miserably in not conducting the detailed survey as expected out of it before submission of the bid even though it had ample time at its disposal before submission of RfQ;

(b) As per its own affidavit it was aware of the discrepancies in the coordinates mentioned in the survey report with reference to the start and end points but depended on the coordinates given by BPC wrongly instead of correcting the same in the pre-bid conference;

(c) No malafide or wilful default or unlawful gain has been attributed to the BPC by the petitioner who had inadvertently mentioned wrong coordinates of ‘start’ and ‘end’ points.

(d) The petitioner has submitted its bid with a view to win the bid and did not agitate the issues before this Commission while it submitted the petition for adoption of tariff and grant of transmission license.

(e) The tariff adopted by the Commission under Section 63 of the Act, 2003 cannot be altered by the Commission by increasing the scope of work. Any increase is allowed only under the provisions of TSA.

(f) The petitioner's claim to invoke section 12.1.1 and 12.2.1 of TSA under change in law for the additional capital work and for the forest clearance work is not maintainable and hence rejected.

(g) The Long Term Transmission Consumers cannot be saddled with the additional transmission charges for no mistake on their part.

43. I order accordingly and the petition is disposed of in terms of the above.

sd/-
(M. Deena Dayalan)
Member

Dated the 8th May 2013